

# HALIFAX

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**Item No. 15.1.1**  
**Halifax Regional Council**  
**March 1, 2022**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:**

Original Signed by 

\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

**DATE:** February 4, 2022

**SUBJECT:** Photo Enforcement Feasibility Study

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## **ORIGIN**

March 24, 2021 – Budget Committee meeting, Item 5: Proposed 2021/22 Transportation and Public Works Budget and Business Plan.

## **LEGISLATIVE AUTHORITY**

*Traffic Safety Act*, SNS 2018, c 29. (**passed but not yet proclaimed**)

### Municipalities

45 (1) The council of a municipality may make by-laws ... (n) respecting the use of electronic enforcement systems

### Electronic Enforcement Systems

311 (1) Where a vehicle or other conveyance is involved in an offence for which an electronic enforcement system is authorized to be used for enforcement pursuant to this Act and the regulations or by-law, and the number plate is captured by an electronic enforcement system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable on summary conviction to the fine provided for the offence.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Suspend the rules of procedure under Schedule 7, the Transportation Standing Committee Terms of Reference, of Administrative Order One, the Procedures of the Council Administrative Order, requiring the Standing Committee to provide policy direction related to neighbourhood transportation initiatives for traffic calming and mitigation; and
2. Direct the Chief Administrative Officer to develop a program of photo enforcement in anticipation of the eventual proclamation of the *Traffic Safety Act* and in accordance with the recommendations set out in the January 2022 consulting report prepared by Stewart Solutions Inc.

## **BACKGROUND**

As part of the 2021/22 Transportation and Public Works (TPW) Budget and Business Plan, Traffic Management identified a key deliverable to complete a feasibility analysis to deliver a photo enforcement program within the Municipality. As a result, an external contract was awarded to Stewart Solutions Inc. in the Fall of 2021 and the final report was received by staff in January 2022.

## **DISCUSSION**

The objective of the feasibility study was to identify the detailed elements required to implement a photo enforcement program including the legislative, operational, technical, and financial components. The study includes a legislation review, jurisdictional scan, preliminary data analysis, recommended operational requirements, proposed implementation timelines, and preliminary cost estimates for set-up and operations.

The full report is included in Attachment 1 with key findings presented below.

### **Legislation Constraints**

Photo enforcement was previously reviewed for use in the Municipality with similar conclusions made; currently there is no existing legislation, that is proclaimed, to enable a successful photo enforcement program.

Given that the new Traffic Safety Act (TSA) has not yet been put into effect, the current Motor Vehicle Act (MVA) and associated regulations are the governing legislation (at the time of this report) and sets out the rules of the road and related provisions governing, for example, enforcement, vehicle licensing and registration. There are two potential options under the MVA that allow for the use of photo enforcement:

#### **Option A – Bill 7**

On November 23, 2007 Bill 7 was introduced, which sets forth provisions that would amend the MVA to enable the use of image-capturing enforcement systems, however such provisions have not been proclaimed. Under the Bill 7 provisions, image-capturing enforcement systems for speed enforcement could only be used for thirty months from the effective date of proclamation. There are no related provisions regarding the continuation of the use of the systems past the thirty months. There is also no indication that the Province intends to ever proclaim these provisions into force.

#### **Option B – Section 307**

This section provides the authority for the Province to enact a regulation authorizing a pilot project. The regulation would be comprehensive and include provisions regarding the start and end dates of the pilot, the equipment to be used, offences, penalties, who is authorized to use the equipment, owner liability, evaluation and even guidelines for implementation. The problem with using Section 307 is that the program would only be a pilot and the regulation would be repealed a maximum of five years after the date it comes into force, or such earlier date as the regulation might provide. Section 307 is not recommended for use as the program would be a limited term pilot but would require essentially the same systems, resources, effort and costs associated with the establishment of a permanent program.

The alternative to the above two options would be the yet to be proclaimed Traffic Safety Act (TSA) as set out in Bill 80, which was introduced to the Nova Scotia Legislature on October 3, 2018. This legislation includes provisions related to electronic enforcement systems and would support implementation of an HRM program. However, at the time of writing this report, the TSA has not yet been proclaimed into effect in whole or in part, and on October 22, 2021, it was announced by the Province that it would be three to four years before the new legislation would come into effect, in part due to a need to develop the supporting information technology system.

### Study Conclusion

"In conclusion, the use by HRM of photo enforcement would appear to be feasible, including financially, to detect and enforce the offence of speeding. To achieve this HRM staff and road safety partners, including the two police services, will need to develop working groups in a collaborative relationship and dialogue with provincial staff.

The timeline set forth in this study provides a list of activities which HRM will need to undertake in order to implement a successful photo enforcement program. These activities were plotted on a four-year timeline to reflect the October 22, 2021 announcement by the Minister of Public Works regarding the three to four - year timeline for proclamation of the Traffic Safety Act and the time required to develop a supporting information technology system. Should the Province's timeline change, HRM could condense the required activities to achieve a shorter implementation."

### Key Recommendations

The final consultant report includes a total of 62 recommendations. Key items are presented here:

- a) At this time, develop a photo enforcement program for the offence of speeding only.
- b) Do not proceed with red light cameras until sufficient data is available to support the need.
- c) Use a hybrid internal and external contract program model.
- d) Identify a champion to advocate for the development and implementation of the program.
- e) Pursue photo enforcement based on the provisions in the proposed TSA, not options within the MVA.
- f) Engage with the Province to establish the necessary framework, including legislation, to enable a successful photo enforcement program.
- g) Create a steering committee comprised of representatives from various departments directly or indirectly involved in the program delivery, including Police.
- h) Engage the public and road safety partners in both program development and implementation.
- i) Develop a comprehensive communication strategy.
- j) Provide publicly accessible information for increased transparency.

### Program Costing

The recommended hybrid internal and external contract program model is anticipated to incur a shortfall of \$477,400 within the first year of operation (including start-up costs, but thereafter would be self sustained, as per the table in the Financial Implications section. The following assumptions were used to estimate program revenues:

- a) A total of 8 cameras to be deployed at any one time.
- b) An average number of 373 tickets would be issued per camera per month, based on a jurisdictional comparison.
- c) Ticket amounts are \$237.50 and \$295 for the lower and higher fine rate, respectively. HRM would receive \$100 for each fine paid in the lower fine range (lower rate of excess speed) and \$150 for each ticket paid in the higher fine range (higher rate of excess speed). The Province would, for each ticket paid, retain the victim fine surcharge (15% of the HRM fine amount). The Province would also retain \$122.50 in court costs from each ticket paid.
- d) All charges will result in convictions and 70% of fines will be paid at the out of court payment amount – based on historical payment rates.
- e) Tickets generated as a result of photo enforcement would be in addition to tickets issued presently and should have no impact on already existing SOT revenues.

Actual revenues will vary with a significant dependence on the number of cameras installed and the number of offences captured locally.

### Next Steps

Transportation and Public Works staff will be reviewing and confirming implementation plans throughout 2022, including initiating conversations with Provincial staff to discuss a legislative and technology path forward. As recommended in the report, a new position for a Project Lead has been identified as an over budget option within the proposed 2022/23 TPW Operating Budget; however, the position is not critical until a feasible path forward is identified with the Province.

### FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with the recommendations included in this report.

If Council chooses to move forward with implementation of a photo enforcement program, costs will be refined and identified in future capital and operating budget submissions. Preliminary costs are identified below. A 2% inflation rate is applied to the estimated expenditures, while actual revenues will vary with a significant dependence on the number of cameras installed and the number of offences captured locally.

	Year 1	Year 2	Year 3	Year 4	Year 5
Estimated Capital Costs	\$1,099,900				
Estimated Expenditures	\$2,385,400	\$2,433,100	\$2,481,800	\$2,531,400	\$2,582,000
Estimated Revenues	\$3,007,900	\$3,007,900	\$3,007,900	\$3,007,900	\$3,007,900
Estimated Net	(\$477,400)	\$574,800	\$526,100	\$476,500	\$425,900

### RISK CONSIDERATION

The implementation of a photo enforcement program has the potential to mitigate road safety risks and reduce fatal and injury collisions as per direction in the Strategic Road Safety Plan.

### COMMUNITY ENGAGEMENT

Community engagement was not undertaken as part of this report. If a photo enforcement program is implemented in the future, a key element to the success of a program will be public engagement.

### ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

### ALTERNATIVES

Halifax Regional Council could choose to not move forward with implementation of a photo enforcement program.

**ATTACHMENTS**

Attachment 1: Halifax Regional Municipality Photo Enforcement Feasibility Study

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

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Transportation & Public Works, 902.471.4393

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# Halifax Regional Municipality Photo Enforcement Feasibility Study

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Prepared By



**STEWART SOLUTIONS INC.**

Experience. Expertise. Excellence.

**January 2022**

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## Executive Summary

There are four critical pillars on which successful photo enforcement programs are built: transparency, accountability, data-based deployment and a road safety focus.

Based on these pillars, this Study provides a relevant and comprehensive road map for determining the necessity of the use of various deployments of photo enforcement in the Halifax Regional Municipality (referred to herein as HRM) as well as the development and implementation of such a program. The work builds on the interest of HRM in the use of photo enforcement – an interest that dates back to 2004. Amendments made to provincial legislation in 2007, that would have authorized the use of photo enforcement and allowed for the admissibility of related evidence and owner liability, were not proclaimed in effect. With the passage, in 2018, of the Traffic Safety Act, which sets out provisions for the use of electronic enforcement systems and the admissibility of the related evidence and owner liability, interest in the use of photo enforcement in HRM as a road safety tool has resurfaced.

Photo enforcement requires more than simply the authority to use electronic enforcement systems to charge owners with an authorized offence. As canvassed in this Study, the procedural code must align with and support the use of photo enforcement. A review and analysis of the relevant legislative provisions did not disclose any barrier to the implementation of the legislation to support the use of photo enforcement and to ensure the sustainability of any HRM program of photo enforcement.

Study methodology included a review of the relevant laws of Nova Scotia, including the yet to be proclaimed Traffic Safety Act, the current Motor Vehicle Act and the Halifax Regional Municipality Charter. Canadian jurisdictional scans were undertaken. Data related to speeding and failing to stop at a red light was obtained from HRM Transportation, the Halifax Regional Police and the Royal Canadian Mounted Police. The data was analyzed to determine if the use of photo enforcement is justified. Interviews were conducted with a number of staff representing various HRM departments as well as the Province, the Halifax Regional Police and the Royal Canadian Mounted Police.

The conclusions and recommendations in this Study are based on the data provided and assumptions made based on that data. Once additional or further data is compiled the conclusions and recommendations could change and care must be taken not to confound the recommendations herein with new or better data.

Data reviewed in relation to the offence of failing to stop at a red light was limited and, in the absence of additional data, it is not recommended that HRM include this offence initially. Data with regard to speeding was more robust and it would appear that a photo enforcement program for the offence of speeding is both necessary and sustainable.

With regard to the misuse of transit lanes, no data was made available and it is not recommended that the use of photo enforcement for transit lane related offences be pursued at this time. Should the situation change, the Study includes information on transit lane photo enforcement.

The Traffic Safety Act sets out provisions specific to the use of electronic enforcement systems. The Act governs the deployment of such systems to capture images of vehicles that commit authorized offences and establishes the necessary regime of owner liability thus allowing for owners and not drivers to be liable for conviction of the authorized offences. The other key piece of legislation is the Summary Proceedings Act which sets out how persons are to be charged; the forms to be used; the use of electronic systems in relation to filing charges with the court and other related matters including service, court costs and penalties.

As noted, the Traffic Safety Act has not been proclaimed in effect as of time of writing and, according to the Minister of Public Works after this Study commenced, it may not be proclaimed for another three to four years given the anticipated significant work to various provincial computer systems required to support the new legislation.

The section – *Path to Implementation* – canvasses the various options available to HRM if there is interest in having a photo enforcement program sooner; however, those options are not recommended as HRM has significant work ahead to prepare for implementing such a program. HRM staff should use the time until the Traffic Safety Act is proclaimed to engage in and complete the multitude of necessary activities as set out in this Study.

There are a number of key and other recommendations for HRM to consider on the path to both determining feasibility of specific deployments and in developing and implementing a photo enforcement program. As a priority, HRM and its road safety partners must base the decision to proceed with photo enforcement on data for the offences that photo enforcement would be used to detect and enforce. Only when, or if, the data demonstrates the need for such a program should further work be done. Comprehensive data is a key pillar of photo enforcement and the absence of such data will negatively impact any evaluation of the use of electronic enforcement systems as a road safety tool.

Observations were made in the course of this work. One was that while there are individual opinions regarding the use of photo enforcement in HRM, there is no champion to advocate for such a program. Having a champion has been an integral part of the successful implementation of all Canadian programs to date. A key recommendation is the identification of someone who can command the necessary audience to get this matter on track both within HRM and, more importantly, with the Province. The second is that there is limited, if any, ongoing dialogue between the provincial and HRM staff. Interviews with provincial staff were scheduled at the end of the first phase of the Study and, in a meeting with HRM staff, the information was relayed to those staff. While individuals may have relationships, systemically, specifically relating to photo enforcement, there appears to be an absence of a standing forum for regular

discussion between the two levels of government and, in turn, limited insight into what is happening. In order to develop and implement a successful and sustainable program of photo enforcement, there will need to be collaborative and fulsome discussions amongst staff at both levels.

The third observation is that the police services consulted saw their role in a photo enforcement program to be advisory or consultative, and neither service expressed interest in 'ownership' of the program. For this reason, we recommend that the program be 'owned' by HRM, specifically in the Department of Transportation and Public Works.

The fourth observation relates to authorized user agreements under which access to provincial registration records should be granted. Despite the history supporting the need for such agreements, and references by some staff to the agreements existing, the work on the Study concluded without seeing any such agreement. It is recommended that the various provisions supporting such agreements be exercised and that HRM execute an authorized user agreement prior to the implementation of a photo enforcement program.

In conclusion, the use by HRM of photo enforcement would appear to be feasible, including financially, to detect and enforce the offence of speeding. To achieve this HRM staff and road safety partners, including the two police services, will need to develop working groups in a collaborative relationship and dialogue with provincial staff.

The timeline set forth in this study provides a list of activities which HRM will need to undertake in order to implement a successful photo enforcement program. These activities were plotted on a four year timeline to reflect the October 22, 2021 announcement by the Minister of Public Works regarding the three to four year timeline for proclamation of the Traffic Safety Act and the time required to develop a supporting information technology system. Should the Province's timeline change, HRM could condense the required activities to achieve a shorter implementation.

# 1.0 Recommendations

## 1.1 Key Recommendations:

1. That HRM staff prepare to develop a comprehensive and transparent program of photo enforcement for the offence of speeding that consists of the elements canvassed in the Study.
2. That HRM utilize the Hybrid Internal and External Contract program model as it is best suited to providing the foundation for a successful, accountable and cost-effective photo enforcement program.
3. That HRM identify a champion within the organization to advocate for the development and implementation of a transparent and sustainable HRM photo enforcement program.
4. That HRM not proceed with photo enforcement for the offence of failing to stop at a red light until such time as it has completed a detailed analysis of sufficient data to determine the extent of the issue and whether the use of photo enforcement is beneficial for detecting the offence.
5. That HRM not proceed with transit lane photo enforcement until such time as data is compiled and analyzed to determine the extent of transit lane misuse and the feasibility of photo enforcement.
6. That HRM staff spend the next 12 to 24 months developing and executing a comprehensive plan to compile data with regard to the use of photo enforcement in relation to speeding to assist in creating and supporting evaluation and site selection.
7. That HRM prepare for a program of photo enforcement for speeding based on the provisions of the Traffic Safety Act and not pursue options under the Motor Vehicle Act.
8. That HRM staff inform the work going forward by reviewing the various publicly available guidelines referenced in this Study and also canvass the matter of photo enforcement program guidelines with provincial authorities early on in the process.
9. That HRM develop and adhere to HRM guidelines for the HRM photo enforcement program in addition to any guidelines issued by the Province.
10. That HRM establish 'ownership' of the program and that the HRM department that 'owns' the program, most likely Transportation, chairs a steering committee comprised

of representatives from the various departments that are directly or indirectly involved in the program delivery including the two police services.

11. That HRM engage with the Province with a view towards establishing a joint working group to facilitate the discussion and collaboration necessary to establish a transparent and sustainable HRM photo enforcement program, including a path forward and related timeline, to ensure that the necessary regulations are developed in a collaborative, informed and timely manner.
12. That HRM engage with the Province to make the recommended amendments to the statutory provisions, including section 312 of the Traffic Safety Act and the Summary Proceedings Act regarding service, prior to proclamation.
13. That HRM identify a program manager to assume responsibility for leading/completing the various activities and periodic reports to update the steering committee and senior management until such time as a final report to Council is ready.

## 1.2 Recommendations Related to Legislation

14. That HRM include as much detail as possible in a by-law as opposed to provincial regulations in order to provide HRM with the flexibility and control necessary to support the HRM photo enforcement program.
15. That HRM staff, in preparation for the dialogue with provincial staff, review the related authorities for by-laws and determine those matters for which HRM will exercise the by-law authority and those matters that HRM would want the Province to address in regulations.
16. That HRM ask the Province to not include named individuals in regulations when authorizing who can lay charges.
17. That HRM confirm with the Province that the mandatory driver licence suspension, currently set out in section 10 of the Summary Proceedings Act and applicable to certain speeding offences under the Motor Vehicle Act and captured, in part, in subsection 310(4) of the Traffic Safety Act, does not apply to convictions based on evidence obtained from electronic enforcement systems irrespective of who was driving, the applicable speed limit or the rate of speed.
18. That HRM consider whether the existing requirement for service by registered mail is acceptable to HRM in the context of the related owner liability charges recognizing the extraordinary cost of such service and that HRM approach the Province to amend the

Summary Proceedings Act to allow for service by regular mail and possibly electronic mail where available and requested by a registered owner.

19. That HRM pursue the use of certified statements, in lieu of having issuing officers or special constables testifying at trials in person.
20. That HRM pursue changing the plate holder information to date of offence irrespective of whether that information is certified or not so that the defendant information can be included in the proposed certified statement in relation to the date of the offence.

### 1.3 Recommendations Related to Guidelines

21. That HRM have guidelines specific to each of the electronic enforcement platforms that HRM is deploying due to the specific nuances of each platform.
22. That the HRM photo enforcement program guidelines be publicly accessible and inform practices and policies for image review and charging.

### 1.4 Recommendations Related to Photo Enforcement Program Design

23. That HRM confirm, based on additional data, which model of photo enforcement best suits the needs, culture and administrative environment of HRM and HRM's road safety partners.
24. That HRM staff convene to consider which of today's features in relation to photo enforcement systems would be acceptable for use in HRM and which would not.
25. That HRM staff stay informed of current trends and developments in the area of photo enforcement in Canada with a view to ensuring that equipment, processes and program components or characteristics remain current.
26. That HRM staff consider the 2011 *Nova Scotia Photo Safety Summary Report – Critical Success Factors* in framing the photo enforcement program development.
27. That HRM staff consider, adhere to and effectively adopt the Alberta *Automated Traffic Enforcement Program Review* and 2019 revised guidelines in both developing and implementing a program.
28. That HRM staff review the Manitoba *Photo Enforcement Performance Program Audit Final Report* to enhance awareness of potential pitfalls in program design and implementation.

29. That HRM staff review and follow the National Highway Traffic Safety Administration's operational guidelines for speed enforcement cameras and other related NHTSA guidelines in program development and implementation.

## 1.5 Photo Enforcement Systems, Images and Testing

30. That HRM work with the Province to ensure that the prescribed information in relation to the photo enforcement images consists of elements that can be shown or superimposed on the images and that support prosecutions.
31. That HRM work with the Province to avoid appending information to the images unless it is absolutely necessary.
32. That HRM ask the Province to include a mark or other indicator in one of the regulations as part of the prescribed information to be displayed on the image obtained through an electronic enforcement system for speed.
33. That HRM post the certificates of accuracy or tester certificates on a publicly accessible web site so that anyone can see HRM's adherence to the certification requirement in regard to speed enforcement deployments.
34. That HRM include who can test photo enforcement systems in an HRM by-law as authorized as opposed to a provincial regulation, including the timing for such testing, as a by-law could be enacted and/or amended in a timelier manner, if necessary, than a provincial regulation.
35. That HRM ensure that the testing of photo enforcement systems, and the issuance of the certificates, is a vendor responsibility.
36. That HRM staff, in consultation with the local police services, establish an acceptable accuracy for the speed measurement component of the photo enforcement systems.
37. That HRM staff internally discuss and explore how best to proceed with the testing of photo enforcement systems and, when a preference is determined, that it be communicated to the Province for inclusion in a regulation as necessary.
38. That HRM work in collaboration with the Province to ensure that photo enforcement systems used to detect red light running, if any, are not subject to testing.

39. It is recommended that HRM adhere to the best practice of having the data shown or superimposed on the image or images by the electronic enforcement system at the time that the image is captured.

## 1.6 Recommendations Related to the Processing of Images

40. That HRM ensures that there is a manager employed by HRM at the processing centre at all times who can deal with issues that will arise especially in the first few months but also on an ongoing basis.
41. That HRM Legal identify specific legal staff to support the processing centre and the photo enforcement program overall.
42. That HRM staff proceed to develop the items listed in the provisions of the Police Act and related regulations, as best practices for employing staff to review and process images, irrespective of the model or class of law enforcement chosen.
43. That HRM staff develop fair and transparent charging policies that would result in the owner of the licence plate being charged unless a statutory exemption exists in the circumstances displayed in the image.
44. That HRM staff consider the arguments for and against an escalating penalty regime for the owner liability offences being enforced through the use of photo enforcement and whether a single penalty for each offence irrespective of the number of times the plate has been captured is preferred.
45. That HRM ensure that the consequences of the owner being convicted is clearly and repeatedly communicated across all platforms to help ensure that persons charged understand the limited consequences of conviction where authorized offences are detected through the use of photo enforcement.
46. That HRM determine, based on the disbursement of fine revenue set out in section 292 of the Traffic Safety Act, whether surplus monies, if any, can flow through general revenue and be allocated by the budget process or whether a dedicated road safety fund for such monies, if any, should be established.
47. That HRM staff engage the Registrar of Motor Vehicles in discussions about an authorized user agreement and the specific requirements to be included in an agreement related to the use of electronic enforcement systems, including when such an agreement will need to be drafted and executed.

48. That HRM not use warning letters prior to the laying of charges unless such use is made non-negotiable by the Province.
49. That HRM develop internal reporting systems that would allow for any number of reports to be generated in anticipation of the Province requiring reports and also to meet public and media demand for data related to the photo enforcement program. (see the Winnipeg 2020 Annual Report, which is a publicly available document, as a good example).

## **1.7 Recommendations Related to Public Engagement**

50. That HRM engage the public and its road safety partners in both program development and implementation to help ensure that the public understands the need for and benefits of the program and to provide opportunities for input and feedback.
51. That HRM ensure that program information is publicly accessible, including a deployment location map, testing certificates and related data.

## **1.8 Recommendations Related to Communications**

52. That HRM develop a comprehensive communication strategy for program development and implementation as this is a critical underpinning of a transparent and sustainable photo enforcement program.
53. That HRM utilize all public education and communication measures, including signage, to support program transparency
54. That HRM develop a web site specific to the photo enforcement program with page content including general information regarding electronic enforcement systems and HRM's plans to utilize such systems. Road safety messaging is critical.
55. That HRM ensure that all road safety partners, committees and groups are kept informed and are provided an opportunity to ask questions and seek clarification directly from staff.
56. That HRM consider the use of endorsements from road safety partners, committees and community groups for inclusion in various communications, including presentations and web pages.
57. That HRM build on the positive results of the earlier public opinion survey supporting the use of photo enforcement.

58. That HRM, to help ensure that the public is kept informed and updated regarding the HRM photo enforcement program development and implementation, include print media, Councillor newsletters and QR codes in public areas as means to drive public access to information in addition to web based content.
59. That HRM develop a logo for use in all communications related to the program.
60. That HRM consider digital internal and external advertisements to promote the road safety aspects of a photo enforcement program.
61. That HRM embrace signage at the approach to sites and at sites as a form of communication that supports public transparency and deflates arguments that the use of electronic enforcement is a “trap”.
62. That HRM develop internal communications to the various fleets and departments, including transit and emergency vehicles, with regard to the program and what it means to those driving vehicles in the respective departments.

## 2.0 Background of Photo Enforcement in HRM

HRM has pursued the use of photo enforcement since 2004. It is reported that the then Chief of Police was instrumental in securing the amendments to the Motor Vehicle Act as set out in the 2007 Bill 7. In response to that legislation, site visits to various provinces where photo enforcement programs operated were completed ahead of the preparation of a 2011 report. Despite the use of photo enforcement elsewhere in Canada, and the comprehensive report, there was no proclamation of the necessary legislative amendments by the provincial government. No pilot under section 307 of the Motor Vehicle Act was undertaken. The yet to be proclaimed Traffic Safety Act sets forth provisions specific to photo enforcement however three years later it has yet to be proclaimed and, as noted elsewhere, proclamation may not occur for another three to four years.

The seven areas of emphasis in the HRM Towards Zero initiative include intersection related collisions and aggressive driving (including speeding). Although the adoption of photo enforcement is not specified as an action item, experience has shown that the deployment of photo enforcement can reduce intersection related collisions and speeding. During the course of this Study, it was clear that while there is interest in the use of photo enforcement, by staff as well as Councillors, there has been and continues to be no champion leading the drive to having such a program.

### 2.1 Legislation

#### The Motor Vehicle Act, RSNS 1989, c 293

The Motor Vehicle Act is in effect at time of writing and sets out the rules of the road and related provisions governing, for example, enforcement, vehicle licencing and registration. There are, as noted elsewhere, two options under the Motor Vehicle Act to allow for the use of photo enforcement.

#### Option A - Bill 7

On November 23, 2007 the then Minister of Public Works introduced Bill 7<sup>1</sup> which received Royal Assent December 13, 2007. The Bill set forth provisions that, if proclaimed, would amend the Motor Vehicle Act to allow for:

- ❖ the use of image-capturing enforcement systems
- ❖ the owner of a motor vehicle involved in certain offences captured by an image-capturing system to be guilty of the offence unless the vehicle was being driven without the owner's consent

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<sup>1</sup> SNS 2007, c 45.

- ❖ proof in court of the information captured by or respecting an image-capturing enforcement system
- ❖ the Minister to appoint persons as testers of image-capturing enforcement systems
- ❖ the requirement that any excess of revenues over costs for an image-capturing enforcement system be used for road safety

Based on Bill 7 receiving Royal Assent, work was done in preparation for the anticipated proclamation of the amendments. This work included the formation of a Steering Committee which included representatives from:

- ❖ Halifax Regional Police
- ❖ Nova Scotia Department of Public Works
- ❖ Nova Scotia Department of Justice
- ❖ Service Nova Scotia and Municipal Relations – Registry of Motor Vehicles

The work of the Steering Committee included site visits to examine a number of photo enforcement programs across Canada resulting in the 2011 *Nova Scotia Photo Safety Summary Report* outlining critical success factors of such programs. Highlights of the report are noted below.

### **Option B - Section 307**

This section is the authority for the Province to enact a regulation authorizing a pilot project. Although it was mentioned in some interviews, it does not appear to have attracted interest with regard to establishing a program of photo enforcement albeit a pilot. Section 307 authorizes “a project for research into or the testing or evaluation of any matter that is governed by this Act and relates to highway use”. To date, two regulations have been made under this authority including a pilot for the use of electric “Segway” scooters. The development of the necessary regulation for a photo enforcement pilot would likely be collaborative in nature. As noted elsewhere, the regulation would be comprehensive and include provisions regarding the start and end dates of the pilot; the equipment to be used; the offences; the penalties; who is authorized to use the equipment; owner liability; evaluation and even guidelines. The problem with using section 307 is that the program would be a pilot and the regulation would be repealed five years after the date it comes into force or such earlier date as the regulation might provide. Section 307 is not recommended for use ahead of the Traffic Safety Act being proclaimed as the program would be a pilot and the effort and costs associated with the establishment of a pilot program closely resemble those that would be incurred for a permanent program.

### **The Traffic Safety Act, SNS, c 29**

The yet to be proclaimed Traffic Safety Act is set out in Bill 80, which was introduced in the Nova Scotia Legislature on October 3, 2018 by the then Minister of Public Works. Bill 80 received Royal Assent on October 11, 2018. The Bill includes provisions related to electronic

enforcement systems including regulation-making authorities. The Bill sets out transitional provisions and also makes consequential amendments to related statutes such as the Summary Proceedings Act. The Traffic Safety Act has, as of time of writing, not been proclaimed in effect in whole or in part. It is understood from interviews that the Act will most likely only be proclaimed in its entirety. On October 22, 2021, it was announced that it would be three to four years before the new legislation would come into effect, in part due to a need to develop the supporting information technology system.

If there is a need or desire to implement photo enforcement prior to the proclamation of Bill 80, neither the provisions in the Motor Vehicle Act (the Bill 7 amendments or section 307) are an effective interim solution. As noted in the *Path to Implementation* section of this Study, there are significant issues with the regime set out in the Bill 7 amendments for the use of photo enforcement for speed and both the Bill 7 amendments and section 307 result in pilot projects or programs.<sup>2</sup> Under the Bill 7 provisions, image-capturing enforcement systems for speed enforcement could only be used for thirty months from the effective date of proclamation. There are no related provisions regarding the continuation of the use of the systems past the thirty months.

Although a pilot under section 307 could be longer in duration, much time would be required to draft the necessary regulation. Both options would result in HRM, for speed enforcement, engaging in effectively the same amount of work for a pilot as it would for a permanent program. It would also be an uncertain, fragile and costly environment in which to commence the use of photo enforcement.

## 2.2 Reports

### 2011 - '*Nova Scotia Photo Safety Summary Report –Critical Success Factors*'

This Report was prepared by provincial staff along with staff from HRM and Halifax Regional Police. Certain aspects of this report have become outdated with the passage of time; however other key aspects have not and are referenced elsewhere in this Study where applicable. While the report reflects a predominantly provincial perspective and includes programs such as the one in Edmonton that subsequently underwent a critical review, the 2011 Report sets out much information, including critical success factors, that can inform the development of a photo enforcement program today.

Of particular note is the concluding line in the Executive Summary of the Report:  
*“Finally, this Report illustrates the significance of working collaboratively and using evidence-based data to build an effective photo safety program the public can trust and support.”*

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<sup>2</sup> Except in the case of red light running; however, this Study recommends that not be pursued at this time.

This statement demonstrates that the authors of the 2011 Report were effectively ahead in identifying what, in summary, has become one of the pillars of photo or automated enforcement. In the years subsequent to the Report, the emphasis on data driven use of photo or automated enforcement programs has become pronounced. Evidence-based decisions regarding whether to use or not use photo enforcement, globally or at specific sites, are common today. Public trust and support have been gained through the development of transparent programs that are not at all reflective of earlier ‘secretive’ or ‘unfair’ programs. These issues, including the use of the collaborative Steering Committee model, will be canvassed elsewhere in this Study.

As noted, the Report was reviewed to determine the currency of the content and its application to this Study. Some observations in the Report hold true today. For example, working collaboratively and using evidence-based data to build an effective program the public can trust and support remain accurate observations. Another example is the list of success factors. While some of the information gathered from the site visits and specific elements of the costing are outdated, many of the principles set out in the Report can help inform program development going forward.

In the decade subsequent to the 2011 Report, much has changed in the area of photo enforcement programs. Programs today are more transparent and public accountability dominates. Guidelines govern most of the key factors in the deployment of photo or automated enforcement systems. The clarity and overall accuracy of the equipment has improved while at the same time the cost has decreased. Even the range of deployment opportunities has expanded – increasing the options available to meet specific site and/or municipal needs. The use of electronic enforcement equipment, for example, no longer requires that roads be disturbed by the installation of loops and one device can now measure speed and capture red light running at the same time.

With regard to jurisdictions visited or considered by the authors of the Report, the automated enforcement experience in Alberta came under scrutiny subsequent to the Report with the Alberta Government issuing substantially revised guidelines for the use of automated enforcement. Although the review of the Winnipeg program pre-dated the Report, it is understood, at the time of writing, that the Manitoba Government intends to undertake an updated review.

The assumptions made in arriving at the costing in the 2011 Report may not hold true due, in part, to the passage of time but also due to the different context. For example, while it appears that in Edmonton the program generated more revenue after it was brought in house; what is not noted is the fact that fines for the related offences increased and that speed tolerances were reduced. With regard to context, Edmonton established a Vision Zero operation with some of the initiatives or components financed by the automated enforcement fine revenue.

The 2011 Report authors, with one exception, were in provincial positions at the time with no municipal corporate representation for context. The lack of municipal representation may be reflected in the perspective but it has not impacted the substantive content of the Report. By way of summary, the key recommendations of the 2011 Report were reviewed and found to be as valid today as they were in 2011. As a result, these recommendations should carry forward as the HRM photo enforcement program is developed and implemented.

- a. **Accountability Framework:** A successful automated enforcement program must have clearly delineated accountability within HRM. As noted elsewhere, who “owns” the program; which departments are responsible for what components and an overall culture of accountability are critical. HRM should run the HRM electronic enforcement program; however, HRM needs to develop and implement the program with the support, not the supervision, of the province and both should work collaboratively to ensure the success of the HRM program.
- b. **Privacy Impact Assessment:** There is no question that the privacy of personal information associated with the vehicle registration is a paramount consideration in the design of the processing centre; however, HRM has to take responsibility for the data security and the Privacy Impact Assessment. The Province would be expected to set out expectations regarding access, storage, use and security of the information, as well as audits, in an authorized requester or user agreement or otherwise by way of policy. The Province may not be responsible in law for undertaking a Privacy Impact Assessment; however, data security and privacy considerations are shared responsibilities and should be paramount and transcend the development and implementation of HRM’s photo enforcement program.
- c. **Provincial Oversight:** The provincial role is to establish the legislative authority; to issue guidelines for the use of electronic enforcement systems; to superintend access to data held by the Registrar of Motor Vehicles (by contract, audits and such) and to set out what road safety related reports, if any, it will require from the HRM program. It should not be to monitor the HRM program or to advise HRM on the development and implementation of the program absent expertise amongst staff in undertaking comparable work in this area.
- d. **Business Model and Processes:** While the examples given are technically correct, the use of electronic enforcement systems is not a business. It is a road safety tool intended to deter, generally and specifically, the commission of the authorized offences enforced through the program and thus extend protection to vulnerable road users. In fact, the HRM program could operate at a loss. Decisions on program design should be made with transparency and accountability at the forefront and that may not align with a traditional business model. The related processes such as image review and charging must be mapped out in detail and in alignment with the governing principles.
- e. **Program Costs:** With regard to what was noted in the 2011 Report in relation to program costs, of concern is the reference to needing to upgrade the Registry of

Motor Vehicle data system. This is explored elsewhere in this feasibility Study. It is up to HRM to determine the operational costs; how to maximize the operation of the electronic enforcement systems and what next steps are required to be taken if the rotation of equipment through selected sites does not provide some offsetting revenue in relation to the ongoing operating costs.

### **2018 - Feasibility of Red Light Cameras and Electronic Speed Detection Devices**

HRM Transportation staff shared an Information Report on the Feasibility of Red Light Cameras and Electronic Speed Detection Devices prepared in response to a 2018 motion passed by the Transportation Standing Committee requesting a staff report on the feasibility, benefits, and authority to install red light cameras and electronic speed detection devices. The Report notes that while HRM is not prohibited from implementing such technology, provincial legislation is currently inadequate for HRM to use the images for the purpose of issuing tickets for the offences detected as the Motor Vehicle Act only provides for driver, not owner, liability.<sup>3</sup> The Report also notes that during the stakeholder engagement process for the Traffic Safety Act, HRM staff requested that the new Act include provisions similar to the previous Bill 7 amendments to the Motor Vehicle Act to facilitate the effective use of red light camera systems and electronic speed detection devices.

The staff Report also provides information on HRM's Strategic Road Safety Framework which has included intersections and aggressive driving (speeding) as 2 of its 7 emphasis areas. The Report states that staff will be conducting an in-depth review of fatal and injury collisions to identify top priority locations requiring safety improvements. The Report notes that if red light running and/or speeding are identified as probable causes for these collisions, image-capturing enforcement systems could be considered as a potential countermeasure once the legislation allows for it. Staff also note that there are various countermeasures aside from enforcement that could be used to address red light running and/or speeding issues. Low-cost intersection improvements could include signal timing optimization and increased signal conspicuity (signal head placement, backboards, etc.).

Speed control measures could include physical changes to the road geometry by way of infrastructure upgrades, pavement markings, signage, etc. Some of these options may provide a more appropriate or cost-effective solution in comparison to the implementation of image-capturing enforcement systems. A statistical and feasibility analysis will need to be conducted at each location to determine the most appropriate countermeasure or combination of countermeasures.

The HRM staff correctly include communications in this Report. It is noted that if this technology is implemented in the future, a key element to the success of the program will be a public education campaign. The Report notes that staff would need to prepare a detailed feasibility analysis prior to implementation.

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<sup>3</sup> The Motor Vehicle Act provides for owner liability in Section 259.

## 3.0 The Path to Implementation

The scope for this feasibility Study as set out in the Request For Proposals included outlining the requirements in accordance with the legislative assumptions and the proposed Nova Scotia Traffic Safety Act (Bill 80). Key project assumptions included that the yet to be proclaimed Traffic Safety Act incorporated changes to allow municipalities the authority to implement photo enforcement technology and that the Nova Scotia Legislature's Bill No. 7, which amends the Motor Vehicle Act to authorize the use of image-capturing devices, would form the basis of the related provisions in the new Traffic Safety Act.

The Traffic Safety Act, commonly referred to as Bill 80, is the enacted but yet to be proclaimed replacement legislation for the current Motor Vehicle Act.<sup>4</sup> It sets out provisions for the use of electronic enforcement systems and, aside from some details noted elsewhere in this Study, would, on proclamation and the making of various regulations, allow municipalities to use photo enforcement for authorized offences. While a substantial amount of detail is yet to be determined, the legislative provisions are, as noted elsewhere in this Study, generally sufficient as enacted to support a program of photo enforcement.

With regard to the Motor Vehicle Act, and the un-proclaimed provisions set out in the Act related to image-capturing enforcement systems, it is unclear, at best, why those provisions, as set out in Bill 7, would form the basis for the provisions for photo enforcement in the Traffic Safety Act going forward. Bill 7 amended the Motor Vehicle Act to provide for the use of image-capturing enforcement systems but in the context of a pilot program for speed enforcement.<sup>5</sup> Further, those provisions represent the best information available to drafters at the time; however, the Traffic Safety Act provisions, at minimum, represent thinking and knowledge more than a decade later. Much has happened in the area of automated or photo enforcement subsequent to the passage of Bill 7 in 2007 and attention should focus on the provisions of the yet to be proclaimed Traffic Safety Act.

Once the feasibility Study started, the focus was on the provisions of the Traffic Safety Act. The provisions in the Motor Vehicle Act specific to photo enforcement were briefly reviewed; however, the content was considered largely irrelevant in the context of the Traffic Safety Act and the provisions set out therein. Three events, however, occurred during the course of the Study that significantly impacted that focus.<sup>6</sup>

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<sup>4</sup> Royal Assent October 11, 2018.

<sup>5</sup> Royal Assent on December 13, 2007.

<sup>6</sup> A fourth event – the release on November 4<sup>th</sup> by the Province of the consultation on fines and penalties under the Traffic Safety Act – is not explored here as there was nothing in the consultation document specific to the use of electronic enforcement systems or photo enforcement.

The first event was the announcement, on October 22, 2021, by the current Minister of Public Works, regarding the timeline for proclamation of the Traffic Safety Act. The Minister publicly stated that it would be three to four years before the new legislation (the Traffic Safety Act) would come into effect, in part due to a need to develop the supporting information technology system. At the same time, the Minister introduced Bill 43, to amend the Motor Vehicle Act, but the Bill contains no provisions specific to or related to the use of photo enforcement.

The second event was the indication, during interviews with provincial staff, that the provisions in the Motor Vehicle Act could be proclaimed in effect instead of waiting for the proclamation of the Traffic Safety Act. Those provisions were reviewed and assessed, as canvassed below, and resulted in a recommendation that the provisions not be relied upon. Other parts of the Study focus on the Traffic Safety Act for reasons that will be made clear in this section.

The third event was the indication, during interviews with provincial staff, that section 307 of the Motor Vehicle Act, which sets out the authority for regulations to be made to enable pilot projects, could be used to allow for a pilot program of photo enforcement in HRM. In many respects, the analysis of this authority and the potential of a pilot program overlaps the consideration of the provisions in the Motor Vehicle Act for image-capturing systems for speed enforcement.

Irrespective of the path taken, any course of action other than the proclamation of the Traffic Safety Act would result in a pilot for speed enforcement and not a permanent program of photo enforcement. Although the proclamation of the Bill 7 provisions would result in a permanent program for the use of photo enforcement for enforcing the offence of failing to stop at a red light, the Study recommends that HRM not pursue, at this time, proceeding with that aspect of a photo enforcement program.

### **3.1 Review of Bill 7 Provisions**

With regard to red light running, Bill 7, in subsection 202A (1), permits the use of image-capturing enforcement light systems to enforce offences under clause 93(2) (e) of the Motor Vehicle Act – failing to stop at a red light. No conditions are attached to that authority in the legislation; however, it is noted that the legislation allows for a peace officer acting on behalf of a public authority<sup>7</sup> to use the systems. Issues with regard to the regulation making authority as outlined below in relation to speed enforcement also apply to the use of the image-capturing systems to detect red light running. No evaluation is provided for in relation to the use to detect red light running; however certain general provisions would apply such as owner liability for the offence when detected through the use of image-capturing systems; admissibility of reproductions of images, testing and what is to be done with fine revenue from convictions based on evidence from image-capturing enforcement systems.

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<sup>7</sup> The Province, a regional municipality, town or municipality of a county or district.

Given that this Study recommends that HRM not pursue, at this time, the use of photo enforcement to detect and enforce the offence of failing to stop at a red light, the provisions specific to red light running are not reviewed or analysed in any detail herein. The recommendation also effectively eliminates intersection safety cameras from consideration. As the Study recommends the use of photo enforcement for the detection of vehicles travelling above the speed limit, the provisions in Bill 7 regarding the use of image-capturing enforcement systems to enforce the offence of speeding<sup>8</sup> are reviewed.

If the provisions of Bill 7 related to photo enforcement are proclaimed in effect, an image-capturing enforcement system can only be used for thirty months following the coming into force of the subsection. This means that image-capturing enforcement systems for speed enforcement could only be used for thirty months from the effective date of proclamation. In effect, the use would be a pilot or limited program. There are no related provisions regarding the continuation of the use of the systems past the thirty months. As a result, if the Province proclaims Bill 7 in effect, HRM would, for speed enforcement, be limited to a 30-month photo enforcement program.

That cap on the photo enforcement program duration means, practically speaking, that HRM would engage in effectively the same amount of work for a pilot as it would for a permanent program but without any commitment that the program would continue beyond the pilot period. Not only would this be a poor use of resources, but, as will be explored in detail elsewhere in the Study, it will take approximately 24 months for HRM to get everything in place for the pilot. In other words, the pilot would start issuing charges six months before the pilot is due to end.

During the last six months of use of the image-capturing enforcement systems to detect the offence of speeding, subsection 202A (3) provides that an evaluation would need to be carried out. As a result, HRM could be placed in the difficult position of an evaluation commencing at the same time charges start to be laid. Even if the Province amends the timeline and allows a pilot to be longer in duration, HRM would potentially have evaluation results that support the use of the image-capturing enforcement systems as an effective road safety tool but no authority to continue that use. In addition, HRM would need to commit to the use of certain image-capturing enforcement systems and be subject to specific regulatory provisions for a program that is limited, by law, in duration.

To rely upon the provisions in Bill 7 to use photo enforcement for speeding, HRM would need, at minimum, a firm commitment from the Province that the limitation on the use of photo enforcement, amongst other things, would be repealed. It would, at best, be an uncertain and fragile environment in which to commence the use of photo enforcement. It is also one that does not put HRM in a position to solely determine the effectiveness of the use of such systems

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<sup>8</sup> Listed offences are subsection 102(2); subsection 103(1); subsection 104(1) and sections 106A and 106B of the Motor Vehicle Act.

in HRM and to determine the path forward. Absent change, the Province would be in control including in relation to the evaluation pursuant to the proposed subsection 202A (3).

The use of photo enforcement as a 30-month pilot project or program is not, however, the only issue. Bill 7 also provides that to use image-capturing enforcement systems to enforce the speeding offences the systems must be:

- ❖ at sites within the Province designated by the Minister
- ❖ identified by warning signs posted on the approach to the site
- ❖ where the maximum speed permitted is seventy kilometres per hour or less.

It is the first condition that is particularly problematic – that the Province would have to designate the sites within HRM where HRM could use photo enforcement. This requirement is at best cumbersome, likely unworkable and will undoubtedly further delay the actual start of the pilot. It would appear that HRM staff would have to propose each site to provincial staff along with the statistical or other justification for selecting that site. There would, presumably, be no flexibility with regard to pivoting to different sites should any of the original sites present unexpected challenges or barriers to the effective use of the equipment. It is unlikely that this condition would change given that it appears consistent with provisions, for example, regarding changes to speed limits within and by HRM. Alternatively, the first condition could be more generic or global in nature – that the Province could authorize use in certain sites or places such as school zones (as is the case in Ontario). While not as problematic as specific site approval, there could be a substantial disconnect between the sites within HRM where data demonstrates that image-capturing enforcement systems are needed and the locations designated by the Minister.

An additional concern is the regulation making authority that allows the Governor in Council to make regulations governing the cost and administration of image-capturing enforcement systems and their use. The cost of such systems should be within the control of the entity securing the systems for use through a public procurement process. Also, using photo enforcement is far more than the cost of the actual systems. There is the need for testing or calibration; signage; review of images; preparing and service of charges; testifying in court as needed and all the activities and functions associated with a transparent and fair program. By comparison, the cost of the systems is minimal. It is not known what could be covered under “administration” and “use” however the former is more problematic given that it would be uncertain at best whereas the latter is likely, at minimum, to be specific zones such as schools, work or other areas of provincial concern.

The regulation making authority specifically allows the Province to prescribe image-capturing enforcement systems by make and model in addition to describing such systems by components or features. This mimics, to an extent, the provisions in the Traffic Safety Act. Irrespective of the authority, this matter must be approached on a collaborative basis.

The Bill 7 provisions set forth detail regarding the testing of image- capturing enforcement systems including the appointment of testers by the Minister. This is in contrast to the Traffic Safety Act provisions which vests some control of certain features with the municipality, including the ability to appoint testers in a by-law, while the Province sets out a more general framework in regulations. This distinction is an important one – that under the Traffic Safety Act HRM would have the authority to enact a by-law and to address certain matters in that by-law. This is a more appropriate approach in the context of a municipal program of photo enforcement.

### **3.2 Review of Section 307 (Pilot Provision)**

A key difference between the Bill 7 provisions and section 307 is that the regulation to be made under section 307 could represent, to some extent, the perspective of HRM. In contrast to the Bill 7 provisions, there is no legislative restriction on the design, focus, evaluation or detail of the photo enforcement pilot. Section 307 authorizes “a project for research into or the testing or evaluation of any matter that is governed by this Act and relates to highway use”.<sup>9</sup> Clearly a project involving photo enforcement would fit within this scope.

HRM could reasonably expect the development of any such regulation to be collaborative in nature and that the regulation would set out provisions regarding the start and end dates of the pilot; the equipment to be used; the offences; the penalties; who is authorized to use the equipment; owner liability; evaluation and even guidelines. In other words, a review of section 307 would suggest that a regulation for a photo enforcement pilot could cover all aspects of a program. A regulation made pursuant to this Section is repealed five years after the date it comes into force or such earlier date as the regulation may provide.

The problem with using section 307 in the period of time until the Traffic Safety Act is proclaimed is similar to the analysis with regard to the Bill 7 provisions – it would be a pilot and the effort and costs associated with the establishment of a pilot program closely resemble those that would be incurred for a permanent program.

In summary, it is not recommended that HRM proceed with a pilot for photo enforcement either in relation to the offence of speeding (Bill 7) or under section 307 should the Province offer a pilot program as an option. Under the Bill 7 provisions, it would be a pilot with a fixed term and, effectively, would for the most part be controlled by the Province with HRM shouldering the risk and bearing the cost of delivering what effectively is a provincial program. The evaluation set out in the legislation will not end well given that the evaluation and charges would start at almost the same time. HRM would be left in the unenviable position of being accountable to the public for a program that is not at all representative of HRM staff efforts and knowledge and the desire to respond to resident road safety concerns. Finally, as noted

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<sup>9</sup> Two regulations have been made using the authority in section 307 – the Segway Pilot Project Regulations and the Off- Highway Vehicle Pilot Project Regulations.

elsewhere, the effort and costs associated with the establishment of a permanent program closely resemble those that would be incurred for a pilot. An additional complication might be that no vendor is interested in having its equipment used for a fixed term pilot, especially one with no clear ownership. Some of these considerations also apply to a pilot under section 307 with a key difference being that many of the features of such a pilot are not in legislation but could be in the pilot regulation.

### **3.3 Next Steps Summarized**

Given the above analysis, this Study maintains a focus on the provisions of the Traffic Safety Act. It is recommended that HRM wait for the proclamation of the Traffic Safety Act and use that time to complete a large number of essential and necessary tasks to identify the need for photo enforcement is supported by data and where data is supportive then develop and implement a photo enforcement program. It is noted elsewhere in this Study what changes or amendments to the related provisions in the Traffic Safety Act and other legislation such as the Summary Proceedings Act are recommended.

There are regulations and HRM by-laws that will need to be enacted or made before the legislative provisions can be relied upon. Implementation of a photo enforcement program in HRM is impacted by the developmental work that is necessary to inform the drafting of the regulations and the HRM by-law. The announcement on October 22<sup>nd</sup> regarding the potential proclamation timeline for the long-anticipated Traffic Safety Act is beneficial in that it will provide HRM with the time to address the recommendations in this Study, including ensuring that the use of photo enforcement is data driven.

This feasibility Study sets out recommendations and information that can be addressed on the path to proclamation of the Act with specific components, such as costing, being updated accordingly.

The delayed proclamation of the Traffic Safety Act will also enable HRM to further refine data related to photo enforcement for speed, especially for purposes of an evaluation but also for site selection. There is much work to be done on the path to implementing a photo enforcement program in HRM and the 3 to 4 years until proclamation of the Traffic Safety Act can be put to good use in the development of a robust and transparent HRM program. It cannot be over emphasized that without a champion for photo enforcement in HRM, the development and implementation of a program will be challenging.

The activities are set forth in more detail elsewhere in the Study; however, a rough timeline would be as follows, subject to Council approval and funding, to move forward with planning and ultimately determining whether to implement a program of photo enforcement:

### **Year 1-2:**

- ❖ Scope out preliminary budget for photo enforcement program.
- ❖ Focus on data collection for speed.
- ❖ Review red light running and consider if subsequent data could support inclusion.
- ❖ Start framing evaluation plan and site selection.
- ❖ Develop program framework.
- ❖ Convene HRM Working Group with lead department as Chair.
- ❖ Confirm necessary systems will be in place.
- ❖ Start work on obtaining the legislative changes and with regard to an authorized user data agreement.
- ❖ Ensure a Privacy Impact Assessment is completed.

### **Year 2 -3:**

- ❖ Start implementing program framework.
- ❖ Establish Joint Provincial/HRM Committee including Provincial Court Administrator representative.
- ❖ Review the data and establish path forward regarding preferred equipment and processing models.
- ❖ Develop site selection criteria and program guidelines.
- ❖ Secure Council and budget approval.
- ❖ Start to develop web content; communication plan and so forth.

### **Year 3:**

- ❖ Draft procurement document.
- ❖ Prepare detailed budget and planning including processing centre.
- ❖ Finalize site selection and rotation plan.
- ❖ Ensure Council members are informed and have equal deployment.
- ❖ Finalize policies and procedures.
- ❖ Release HRM guidelines.
- ❖ Finalize work with Province on the various provincial regulations.
- ❖ Draft and obtain Council approval for related HRM by-law. Consider and make decisions regarding the various details as outlined elsewhere in this study.

### **Year 3-4:**

- ❖ Finalize procurement of equipment.
- ❖ Set up and staff the processing centre.
- ❖ Conduct training and test systems.
- ❖ Update web pages and communications.
- ❖ With firm commitment as to proclamation date, install and test equipment.
- ❖ Post signage.
- ❖ Program is live and charges can start to be issued.

## 4.0 Jurisdictional Scans

### 4.1 Existing Photo Enforcement Programs in Canada

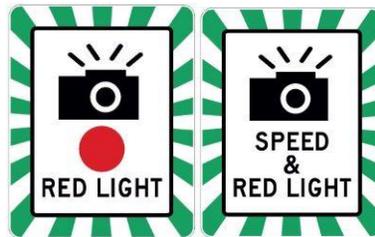
At time of writing, the Provinces of Prince Edward Island and Newfoundland and Labrador, as well as the Northwest Territories, Yukon, and Nunavut do not currently authorize or use any type of photo enforcement. Similar to Nova Scotia, New Brunswick has legislation that authorizes the use of photo enforcement; however, Bill 51, An Act Respecting Image-capturing Enforcement Systems, which received Royal Assent on June 11, 2021, has not yet been proclaimed in effect. British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec all have photo enforcement programs which are, with some exceptions, mostly authorized by the provincial governments and administered or run by municipalities. All require warning signs to be posted either by policy, legislation or guidelines. Over time, some jurisdictions have adopted intersection safety cameras which combine the detection of failing to stop at a red light and speeding. In recent years, there has been interest in automated school bus camera systems however these systems are not canvassed herein give the HRM focus on red light running and speed.

#### British Columbia

The use of red light camera systems was implemented in July, 1999; however, the speed program, which targeted high risk areas and areas of concern identified by the public, only operated until 2001 when it was abolished due to negative public perceptions and a legal challenge. Photo enforcement for speeding started again in mid-2019; however, it is now undertaken only at intersections using red light camera systems that are modified to capture speed (intersection safety cameras). As of time of writing, intersection safety cameras are used in a program run by the police, the provincial government and ICBC (Insurance Corporation of British Columbia). It is reported that 35 of the 140 intersection safety camera systems also detect high end speeds with the balance detecting red light running.

Intersection Safety Camera Officers (ISCOs) are responsible for issuing all intersection safety camera charges and are appointed as Special Provincial Constables under Section 9 of the British Columbia Police Act. The officers are also responsible for prosecuting the violation tickets in Provincial Traffic Courts throughout the Province. A ticket is issued if the vehicle fails to stop at a red light or if the vehicle enters the intersection well over the posted limit (at an excessive speed) - on a red, yellow or green light. The provincial government reportedly transfers 100 percent of net revenue from traffic violations to municipalities that are directly responsible for paying for policing.

Warning signs, as depicted by the images below, are shown on the British Columbia Government website.



The 2020 Intersection Safety Camera Annual Report is a publicly available document that HRM staff could reference when developing various communication pieces, including reports.

## Alberta

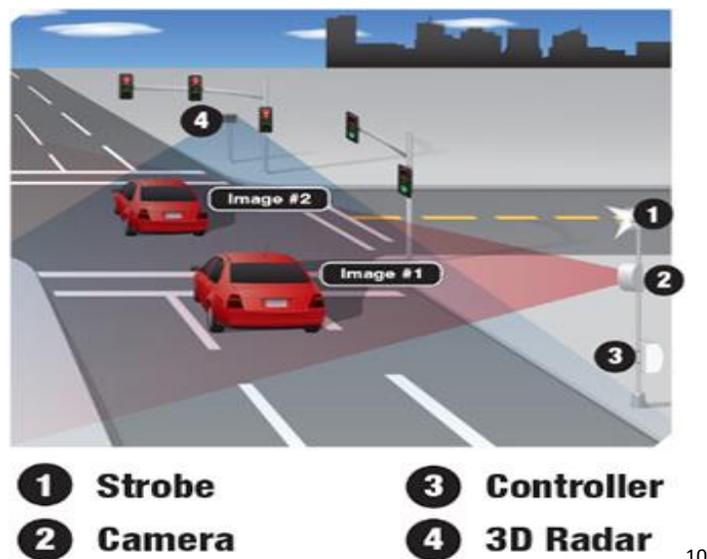
While provincial legislation authorizes the use of photo radar, municipalities and/or the police services are fully responsible for the administration of the photo radar programs. The authority to use both red light camera systems and photo radar has been in place since 1999. Intersection safety camera systems that allow for the detection of red light running and speed have been used since 2009. Provincial guidelines have been in place since the beginning and were substantially revised following a program review in 2018. The original intent of the guidelines was to ensure consistency in the application of photo radar by municipalities and to protect vulnerable road users (pedestrians, police at road side, construction workers and school children). The review recommended that photo radar be used in high-risk, high-collision areas, especially school and playground zones as well as construction zones. It is not used on provincial roads. Only a charge of failing to stop at a red light or a charge of speeding can be laid but not both.

Municipalities in Alberta may use a variety of camera systems and a blended processing model with vendors involved and authorized to review images and lay charges. For example, the City of Edmonton uses intersection safety devices, vehicle mounted and hand held photo enforcement (speed) devices. Effective December 1, 2019, a freeze was instituted by the Alberta Government and municipalities and police services cannot install new photo radar equipment; upgrade existing photo radar devices or add new photo radar locations. The temporary freeze is intended to allow the Province and municipalities to work together to refine the rules for radar site selection, operational restrictions and data collection. During the freeze, police services can continue using existing photo radar equipment and locations to ensure safety. The 27 municipalities in Alberta that use photo radar are required to post specific information about how their photo radar programs are enforced. As of March 1, 2020 all municipalities using photo enforcement must provide annual reports describing, amongst other things, the impact of automated speed enforcement on traffic safety and how automated speed enforcement is achieving the objectives of the municipality's traffic plan.

The 2019 Alberta *Automated Traffic Enforcement Technology Guidelines*, which must be adhered to pursuant to section 3.1 of the Alberta Police Act, is a publicly available document that HRM staff should reference to help inform the development and operation of an HRM photo enforcement program.

## Saskatchewan

The Province has used red light camera systems since 2001. Photo enforcement for speed started in 2014 as a two year pilot project to reduce speed-related collisions based on a recommendation from Saskatchewan’s Special Committee on Traffic Safety with the support of municipal governments and police services. The technology is used to reduce speeding in high-risk/traffic calming areas including school zones, construction zones and sections of provincial and municipal roads with high collision risk. Following an evaluation, the pilot was made permanent in the fall of 2018. Representatives from municipalities, the Ministry of Highways and Infrastructure and Indigenous lands/territories must apply for permission to have a camera system in their location. The provincial government receives 25% of the revenue with the balance divided between participating municipalities and the Provincial Traffic Safety Fund. The processing model is a blended one. Vendor employees are sworn in as Saskatchewan Commissioners of Oaths and validate that the licence plate is legible, secure registered ownership information and so forth. Only police officers can actually lay the charge – Notice of Intended Prosecution- which the vendor employees then serve by mail to the registered owner.



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The red light camera systems used in Saskatoon, in addition to the two images, also record a 12-second digital video of the violation, which includes the six seconds prior to and the six seconds after running the red light. The captured images are sent electronically to a processing centre where vendor employees review them. If the processor identifies a violation, the images

<sup>10</sup> Image from the City of Saskatoon web site: <https://www.saskatoon.ca/moving-around/driving-roadways/safe-driving/red-light-cameras>

are then reviewed by a police officer with the Saskatoon Police Service, who determines if a violation has taken place. Persons who receive tickets are able to use a unique personal identification number which, along with the ticket number, allows them to access the images (pictures and video) on line. If the person does not have access to a computer, in person appointments can be scheduled.

## Manitoba

Manitoba started to use photo enforcement for speed in 2001 as a pilot program that became permanent in 2003. Red light camera systems were introduced in 2003. Both the Winnipeg City Council and the Winnipeg Police Service requested that the Province grant the authority to use photo enforcement so that municipal safety could be improved. The ten mobile photo radar systems, which are used in conjunction with a vehicle, are exclusively used in Winnipeg and are deployed in school and construction zones as well as around playgrounds. In 2012, the Province introduced amendments to the Image Capturing Enforcement Regulation allowing for the use of digital technology. In 2017, a web portal was established to allow persons receiving a photo enforcement ticket to view the captured images in colour with links for payment.

The City of Winnipeg uses intersection safety cameras – 33 camera systems deployed at 49 intersections at time of writing - to detect red light running and speed. The Winnipeg Police Service is responsible for the program that has a blended processing model involving vendor employees and police service staff. It is understood that the vendor is paid per ticket. In 2020, the Winnipeg Police Service acknowledged that it lacks data to properly evaluate the photo speed-limit enforcement program and confirmed that the vendor, that operates the cameras, is largely free to decide when and where to dispatch mobile units around the City. The police service also runs an ongoing public education campaign to increase awareness of the dangers of excessive speeding. A request to the province to support the use of currently available photo enforcement technology is indicated in their 2020 annual report. Increasing road safety public awareness by enhancing communication messaging is also outlined in the report. A copy of the Winnipeg Police Service 2020 Annual Report is publicly available for review and consideration by HRM staff.

In 2021, the Manitoba Court of Appeal dismissed a challenge to the constitutional validity of owner liability in a case where the charge arose from the use of photo enforcement.

## Ontario

Red light camera systems have been authorized under provincial legislation for use by municipalities since 2000. Following a two-year pilot the program was made permanent. The red light camera systems are specifically named (make and model) in the regulation and municipalities must be designated by regulation. Initially the number of municipalities using the systems remained constant but in recent years more municipalities have implemented programs. As of time of writing, all participating municipalities use one municipally operated processing centre to review the red light camera system images and lay charges. Only provincial

appointed provincial offences officers, employed by municipalities, can access the ownership data from the Registrar of Motor Vehicles and issue charges. There are no guidelines for the use of red light camera systems and no program review has been undertaken.

Since 2018, automated speed enforcement is also provincially authorized for use by municipalities but is limited to use where the posted speed limit is under 80 kph and the location must be a school or municipally designated community safety zone. Unlike red light camera systems, the automated speed enforcement camera systems are described but not prescribed by regulation and municipalities do not have to be designated to use the systems. Signage is a mandatory component of the program and guidelines exist. A provincial review is to be completed; however that review has not commenced as of time of writing. As with red light running, images captured through the use of automated speed enforcement are processed at one municipally operated processing centre by provincial offences officers.

Ontario also authorizes municipalities to use automated school bus camera systems to detect the offence of failing to stop for a school bus where the stop arm is deployed and has made certain school bus related offences owner liability offences for this purpose. The Province has issued guidelines. More recently, for the City of Toronto, the use of photo enforcement to detect vehicles that fail to stop for street cars when the doors are open for passengers to embark and disembark was authorized.

Irrespective of the type of photo enforcement, the processing model in Ontario requires that the image review and charge laying be done by provincial offences officers who must be municipal employees. Vendors are unable to access Ministry of Transportation registration information, as that can only be done by provincial offences officers and, as a result, a hybrid model for processing is not used. The Province retains the Victim Fine Surcharge component and the court costs with the municipalities that administer the provincial offences courts, pursuant to an agreement with the Province, retaining the net fine revenue.<sup>11</sup>

## Quebec

The use of photo enforcement for speed in Quebec started in 2009 as Phase One of the program. It was introduced based on recommendations from the Quebec Road Safety Task Force with support from municipalities and police services. Automated speed enforcement is deployed in urban centres, such as school and construction zones, with high collision volumes. Phase 2 and the municipal cooperation pilot project began in 2015. The government authorized the installation of additional photo radar devices, increased the number of regions where the devices are used and implemented a municipal cooperation pilot project (MCP) with the certain cities. The objective of the MCP was to evaluate the type of cooperation and the types of photo radar devices that would be the most suitable in a municipal context. The period to

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<sup>11</sup> While these are often the same municipalities as those using the systems, that is not always the case and specific agreements between the upper and lower tier municipalities govern the ultimate disposition of the net revenue.

analyze the results ended on June 30, 2017. At the end of the pilot project, the participating cities and government partners worked together to produce a report. Conclusions were drawn regarding, in particular, road safety, the social acceptability, management and use of the devices, as well as technological and financial aspects. The report makes twelve recommendations for the further development of the use of these technologies in Quebec to improve the efficiency and management of automated enforcement and allow the implementation of new devices in other regions and municipalities throughout Quebec. It is anticipated that municipalities and government partners involved in the project will propose guidelines on the conditions to install new devices in municipalities. The MCPP report is available in the French Language.

In Quebec, four types of devices are used - stationary photo radar devices; mobile photo radar devices installed in a van or mounted on a trailer; red light camera systems and red light camera systems that also detect vehicle speed. The photos are encrypted to ensure confidentiality and are sent electronically to the evidence processing centre which is under the responsibility of Sûreté du Québec. A peace officer makes sure that all the key elements of the offence have been collected. The general offence report is used to produce a statement of offence and both documents are sent electronically, using a secured site, to the Bureau des infractions et amendes (BIA) of the ministère de la Justice. The BIA issues a statement of offence on behalf of the prosecutor, the Directeur des poursuites criminelles et pénales, and sends it to the vehicle owner. The BIA also ensures that the statement of offence is served in accordance with the provisions of the Code of Penal Procedure and the phases of the judicial process.

Phase 3 of the program is planned to run from 2019-2023. Phase 3 involves the in-depth analysis, experimentation and implementation of the earlier recommendations. The financial assistance component of the highway safety fund, in which the sums paid for related fines and fees are deposited, was established in 2017. These monies are allocated only to initiatives or programs designed to improve road safety or assist road victims. The implementation and operation of photo radar devices was the first measure financed by the fund.

## **4.2 Program Reviews, Recommendations and Guidelines**

Although a number of jurisdictions in Canada use automated or photo enforcement and have undergone or are subject to program reviews, as summarized below, Alberta's review and resulting recommendations is considered a critical resource in supporting internal reviews of existing programs and formulating new programs of photo or automated enforcement. For example, Ontario's automated speed enforcement program design and implementation reflects the lessons learned from the Alberta review. This section explores recommendations that are not specific to the jurisdiction or program resulting from program reviews as well as guidelines for automated enforcement programs irrespective of whether the guidelines exist due to a

program review. Brief descriptions of the jurisdictional programs are included, where applicable, to put the review or guidelines into context.

Excluded from this section are evaluations specific to the deterrent effect of photo or automated enforcement programs as well as data on before and after incidents (of offence).<sup>12</sup>

JURISDICTION	PROGRAM REVIEW	RECOMMENDATIONS	GUIDELINES
ALBERTA	YES	YES	YES
ONTARIO	NO	NO	YES
MANITOBA	YES		
SASKATCHEWAN	YES		
BRITISH COLUMBIA	YES		
QUEBEC	YES	YES	
NEW BRUNSWICK	NO	NO	
UNITED STATES*			YES
*see text below			

## Alberta

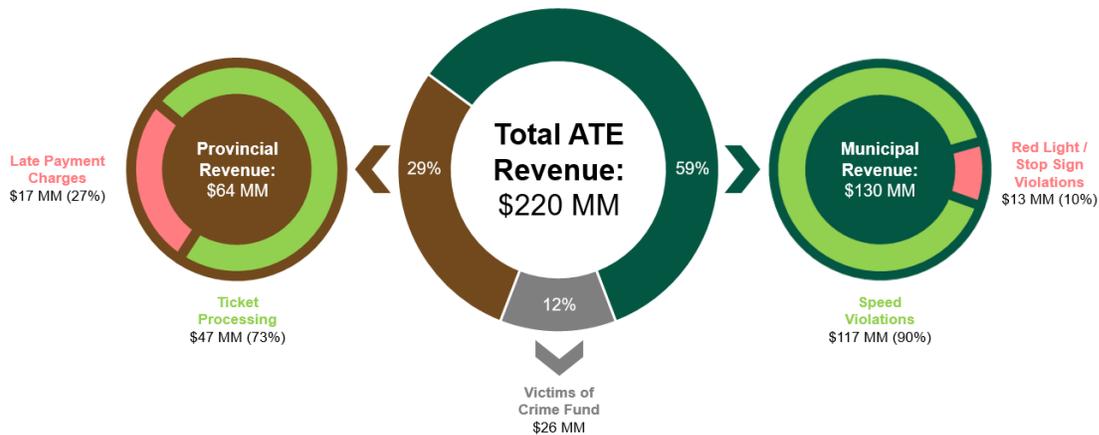
This jurisdiction has undergone the most recent and arguably most informative and focused program review of automated enforcement. The *Automated Traffic Enforcement Program Review* concluded in a summary report issued in September, 2018.<sup>13</sup> The report canvassed the role of automated enforcement in relation to traffic safety; revenue; whether programs were compliant with the then guidelines and the effectiveness of those guidelines. It identified opportunities for improvement in the three main categories. Municipal attitudes and public engagement or opinion were included.

Alberta has used automated enforcement, with accompanying guidelines since 1999, starting with photo radar and red light camera systems which were followed by the introduction of intersection safety cameras in 2009. Overall the program in Alberta sees municipalities using intersection and non-intersection camera systems. Intersection safety cameras are used to enforce speed on green and failure to stop at a red light and non-intersection enforcement relates to speed (speed enforcement camera systems). Revenue source and distribution is illustrated in the following figure:<sup>14</sup>

<sup>12</sup> A review of studies regarding the benefits of the use of photo enforcement is outside the scope of this Study. A literature review will disclose various studies – the most recent of which has been undertaken by the Hospital for Sick Children in Toronto.

<sup>13</sup> The City of Spruce Grove, Alberta undertook a report to Council on automated enforcement (dated 2019) which references the provincial review and revised guidelines. It canvasses common concerns and perceptions regarding automated enforcement in some detail albeit at the local level.

<sup>14</sup> Figure 7, page 12 of the Alberta *Automated Traffic Enforcement Program Review – Summary Report*.



The revised Automated Traffic Enforcement Technology Guideline<sup>15</sup> was issued in February, 2019 by the Alberta Justice and Solicitor General Law Oversight Branch. In contrast to Ontario, for example, that has issued, with no specific statutory authority, provincial guidelines to encourage and support municipalities to engage in best practices, the Alberta guideline relies on legislative authority. As stated in the Preamble, pursuant to section 3 of the Alberta Police Act, the provincial government is responsible for ensuring adequate and effective policing is maintained throughout Alberta. The Minister of Justice and Solicitor General, under section 3.1 of the Act, may establish standards for police services, police commissions, and policing committees and ensure standards are met. Police services that must comply with the standards include all police services in Alberta, including regional, municipal and the provincial police service (i.e. Royal Canadian Mounted Police).

The guideline provides “*direction which police services shall adhere to prior to and when using*” automated traffic enforcement. It states that the Minister of Justice and Solicitor General approved the guideline, after consulting with the Minister of Transportation and that the Minister of Justice and Solicitor General may provide additional direction and requirements at any time. It is stated that the guideline was designed to promote consistent, fair, effective and transparent use of automated enforcement in municipalities by police services and peace officers across Alberta.

The automated enforcement program that underwent review and resulted in the revised guideline was, in summary, run by police services and/or municipalities. In summary, the program included unfair charging practices such as, for example, laying charges in transition zones –stretches of road where the post speed limit changed. Allegations that the program was a ‘cash cow’ were effectively substantiated by the review and it was stated that the program had been used as a revenue generation tool more than it should have been. A ban on the use of photo radar was imposed pending the release of revised guidelines. It was stated at the time that municipalities would also have to present a clear plan to use photo radar, backed up by collision data to prove it was being used at high risk locations. The revised guideline is a

<sup>15</sup> Publicly available. The guidelines as revised in 2019.

roadmap for any municipality considering automated enforcement to follow to ensure a road safety based, transparent and fair program.

Irrespective of the program model chosen by HRM, it is recommended that the Alberta Guideline serve as an informative and guiding resource in the overall and detailed program development especially given that the guideline reflects matters that caused the public to lose confidence in the use of automated enforcement and perceive that the program was unfair and unreasonable. The effective adoption of the Alberta Guideline, where applicable, will support the development and implementation of a transparent program that is publicly acceptable.

## Ontario

The Ontario *Highway Traffic Act* sets out a regime of owner liability – the plate holder is responsible for offences that are indicated to be owner liability – which is the underpinning of automated enforcement in the province. For example, speeding is a driver offence but the legislation specifically provides that when automated speed enforcement (ASE) is used to detect the offence it is the owner who is responsible. Under the regime of owner liability, charges can only be issued to the plate holder as of the date of offence on the records of the Ministry of Transportation. Owners are only liable to monetary consequences on conviction. The monetary consequences are the same for drivers and owners.

The Province has had an unfortunate history with automated enforcement based on the short lived experience with photo radar on the major highways in the mid-1990's. That experience is not reviewed here other than to note that it serves as an example of how not to run a program of photo enforcement. It was the resulting public outrage that resulted in the end of the program.

Each of the automated enforcement programs is addressed separately to highlight a separate consideration of reviews and guidelines.

### (a) Red Light Camera Systems:

In Ontario, red light camera systems have been used by municipalities since 2000 to detect the offence of failing to stop at a red light. The use is authorized by provincial legislation, which, through regulation, prescribes the actual red light camera systems that can be used; designates the specific municipalities where the systems can be used and sets out so-called location codes for each of the municipalities that must be used. It is the only automated enforcement regime in Ontario that is governed by such provisions. The initial group of municipalities formed a steering committee – a model that continues today to superintend the program and make key decisions. In recent years, the number of participating municipalities has increased. The model used, in addition to the Steering Committee, is that of a joint processing centre – one municipality provides processing for all participating municipalities. Images are reviewed

and charges laid by municipally- employed provincial offences officers who are designated by the provincial Minister of Transportation.

In the 20+ years since inception, there has been no program review nor are there any internal or government guidelines for the program. The program model was relied upon in the development and implementation of the automated speed enforcement program and, to date, is considered a success.

**(b) Automated Speed Enforcement:**

Automated speed enforcement systems have been in use in Ontario for approximately two years at time of writing. Program development and implementation was modeled on the experience with red light camera systems. There is a steering committee and a joint processing centre. Aside from the legislative and regulatory provisions, the two programs are almost identical.

One difference, however, is that the program development and implementation was informed by guidelines issued by the Ministry of Transportation – guidelines which included a program review<sup>16</sup> - before the finalization of the program design. The government guidelines specifically refer to a 180-day program review period and that the review is to be undertaken by the Parliamentary Assistant to the Minister of Transportation. The purpose of the review is to ensure that the program is operating as intended or if further legislative, regulatory or policy changes are needed to ensure that municipal automated speed enforcement programs are meeting the Province’s objective of transparently improving road safety while retaining the public’s trust. The section concludes with a web address for municipalities and the public to submit comments. As of the time of writing, no such review has been undertaken. An obvious reason would be the intersecting event of the global pandemic. There is speculation that the review was included to provide the Province with an escape route should any or all municipalities effectively misuse automated speed enforcement as a revenue versus road safety tool or should the public object to its use. Given the public support of the program and the principled and transparent approach to how it operates, it is unlikely that this review will be undertaken; however HRM should monitor for the delivery of such report in the future.

Another difference was the availability during the pre-implementation period in Ontario of the Alberta program review and resulting guidelines. Ontario municipalities involved in the program development were able to determine that the recommendations or guidelines were, to a large extent, already captured or reflected in the Ontario program model. In regard to some details, the municipalities were able to ensure compliance with the revised Alberta program guideline.<sup>17</sup>

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<sup>16</sup> The guidelines are publicly available.

<sup>17</sup> Publicly available.

### (c) Automated School Bus Camera Systems:

Although the offence of failing to stop for a school bus became an owner liability offence in 2016, the legislative authority for the use of automated school bus camera systems is more recent even though a few municipalities have been using such camera systems to detect incidents and lay charges. The new legislative regime creates offences specific to the use of the stop arm – whether or not the bus lights are flashing at the time the vehicle passes the stopped bus is irrelevant. A regulation has been made setting out certain details and guidelines for the program have been issued by the Ministry of Transportation.<sup>18</sup>

It is unclear, at time of writing, how many municipalities will use these camera systems. Unlike red light camera and automated speed enforcement, there is no clear ownership by municipal transportation departments in the context of school transportation companies and consortiums; school boards and cross jurisdictional daily trips by buses. There is limited data on the number and location of incidents of vehicles failing to stop when the school bus is stopped (an essential element of the offence in Ontario). The inclusion of these camera systems has highlighted potential issues regarding the use of video versus still images.

Although video can potentially be viewed through the provision of a link to the person charged, the introduction of video in court at trial can be more time consuming than still images. An overarching issue is that there is, in many municipalities, a complete lack of capacity, at time of writing, for any resulting charges to be filed let alone taken to trial in municipally administered provincial offences courts. The use of these camera systems is intended, in the near future, to rely on a new provincial regime of administrative monetary penalties that will be administered or run by municipalities and that will eliminate reliance on the justice system; however the regulation governing the new regime is still under development and it will be some months before municipalities can be ready with new systems. It is anticipated that all automated enforcement systems will be authorized under the new administrative monetary penalty regime.

## Manitoba

Photo enforcement in Manitoba is permitted in the City of Winnipeg to detect the offence of failing to stop at a red light and for speed enforcement in school, playground and construction zones and some intersections. Image capturing enforcement systems are prescribed by provincial regulation. In addition to the provisions in the Manitoba *Highway Traffic Act* regarding use of automated enforcement, including evidentiary requirements, it should be noted that Manitoba has prescribed a number of rules related to the use of automated enforcement including the Image Capturing Enforcement Testers Regulation.<sup>19</sup> Consequently these public ‘rules’ maybe considered an alternative to, or substitute for, guidelines in the

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<sup>18</sup> Publicly available.

<sup>19</sup> Man. Reg. 144/2017.

Province. For example, there is a regime of testers and tester certificates including a requirement that devices must be tested every six months.

In 2006, the City of Winnipeg undertook an audit of the photo enforcement program. The *Photo Enforcement Performance Program Audit – Final Report* made recommendations regarding three specific areas: program launch (was the degree of planning that went into launching this initiative sufficient); program management (is the City managing the program in an effective and efficient manner) and decision making (are decision makers getting the information needed to make informed decisions). Detailed recommendations include multiple aspects of the procurement process, including the evaluation of the RFP and the award; management of the program, including site selection and cost, and multiple issues regarding reporting on the program. Fifteen recommendations are listed along with a summary of observations. Despite the date of the audit and enhanced procurement policies and procedures today that render certain of the identified issues moot, it is recommended that HRM review this report to enhance awareness of potential pitfalls in program design and implementation.

The Traffic Injury Research Foundation (TIRF) undertook a study of the Winnipeg program in 2012 – the *Evaluation of the Photo Enforcement Safety Program of the City of Winnipeg*. Recommendations arose from the program evaluation; public opinion poll; time series analyses; intersection camera equipment (speed and red light running) and the effectiveness of photo radar (impact on speed at school and construction sites). The recommendations from the study are set out in the Report’s Executive Summary.

The Winnipeg Police Service issues annual reports on the photo enforcement program (speed and red light running) in Winnipeg. It is noteworthy that such annual reports are prepared and submitted to the Province of Manitoba under the ‘Conditions of Authority Agreement between the City of Winnipeg and the Province of Manitoba regarding Image Capturing Enforcement Systems.’ The original communication of the conditions from the Province to the City, dated December, 2002 was located but it is unknown what, if any changes, have occurred over the passage of time. Included as conditions are the posting of warning signs; the use of warning notice periods; public awareness campaigns and annual reporting.

There are also conditions of use set out in section 9 of the Image Capturing Enforcement Regulation,<sup>20</sup> which sets out specific prohibitions on the use of the systems in certain locations or in certain circumstances. For example, the front plate of the vehicle cannot be captured. The annual report does not specify recommendations and does not set out suggested changes to any guidelines, the agreement with the Province or prescribed conditions of use.

In the 2020 Winnipeg Police Service Annual Report, it was noted that the Province issued an RFP, in 2019, for qualified companies to undertake a review of the Photo Enforcement

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<sup>20</sup> Man.Reg. 220/2002, as amended.

Program; however the RFP, and hence the review, was halted as a result of the coronavirus pandemic with the review being delayed indefinitely.<sup>21</sup>

## Saskatchewan

Saskatchewan started with a pilot project for photo speed enforcement in 2014, to study the impacts of speed and collisions on photo enforced roads, with the issuance of tickets commencing in March, 2015. A report, released in September of 2018, found that speeds and collisions were reduced during the pilot on roads where photo enforcement was situated. The findings in the report resulted in the use of photo enforcement becoming permanent; however the report is not an operational review per se. The report focuses on public awareness and support; impact of the use of photo enforcement on speeds and collisions; the deterrent effect of photo enforcement; costs and the societal benefits.

## British Columbia

The original photo radar program was cancelled in 2001 after operating for approximately five years. There is a review or study from 2010 which assesses the economic impacts of the then large-scale photo radar program in British Columbia.<sup>22</sup> The author concludes, in part, that the application of such programs should be planned and implemented with caution.

*Every effort should be made to focus on and to promote the program on safety improvement grounds. The program can be easily terminated because of political considerations, if the public perceives it as a cash cow to enhance government revenue.*

In 2018 it was announced that the Province would re-introduce intersection speed camera devices, in part due to the intervening rise in collision rates at intersections. Automated speed enforcement cameras started to be deployed at intersections in mid-2019. The Intersection Safety Camera (ISC) program has 140 camera systems deployed to detect red light running with 35 of those camera systems also detecting vehicles exceeding the speed limit. While some of the detail regarding the program might be informative, there is no recent program review, recommendations or guidelines at time of writing.

## Quebec

The Province uses photo enforcement, including photo radar devices and red light camera systems. Use of automated enforcement started in 2007 and was authorized for an initial period of 18 months. In 2012, legislation was enacted to modify the rules governing the use of photo radar devices and red light camera systems and to amend related provisions. This made the use of automated enforcement in Quebec permanent and extended the use of photo radar to school and roadwork zones.

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<sup>21</sup> The 2020 Report is publicly available.

<sup>22</sup> *Safety and Economic Impacts of Photo Radar Program*. Greg Chen, School of Public Affairs, Baruch College, New York, New York, USA.

The municipal cooperation pilot project, that saw municipal use of photo radar, was reported on by the participating municipalities and government partners. At the end of the pilot project, the participating cities and government partners worked together to produce a report. Conclusions were drawn regarding, in particular, road safety and the social acceptability, management and use of the devices, as well as technological and financial aspects. The municipalities and government partners involved in the projects could propose guidelines on the conditions to install new devices in municipalities. The MCPP report is available in the French Language.

Guidelines for ongoing or future municipal use were envisaged to follow. Following that report, in May, 2019, the Minister of Transport tabled an assessment report on photo radar devices and red light cameras. The report makes twelve recommendations for the further development of the use of automated enforcement in Quebec to improve the efficiency and management of the programs and to allow the implementation of new devices. Neither of these two reports are available in English and, as a result, more detailed information is not included in this report. Quebec has a three-phase implementation plan for automated enforcement and entered the third phase in 2019. This phase runs until 2023 and involves an in-depth analysis, experimentation and implementation of the recommendations set out in the two reports noted above. Phase 3 involves the in-depth analysis, experimentation and implementation of the assessment report recommendations.

## United States of America

This feasibility study does not include reviews or guidelines from American jurisdictions because of the fundamental differences between the American and Canadian justice systems. In summary, in Canada, the Canadian *Charter of Rights and Freedoms* sets out numerous, related protections, including the presumption of innocence, that apply in prosecutions related to provincial offences. For example, if a charge is laid for speeding, the prosecution must prove beyond a reasonable doubt that the person charged committed the offence alleged. In the American system, in summary, the person must prove that they did not commit the offence. This oversimplification is included merely to illustrate the fundamental differences that make jurisdictional comparisons with the United States mostly meaningless.

With regard to guidelines, there is one notable exception. The United States National Highway Traffic Safety Administration (NHTSA) has operational guidelines for speed enforcement cameras<sup>23</sup> and operational guidelines for speed enforcement.<sup>24</sup> As with the Alberta guidelines, the operational guidelines for speed enforcement cameras should be reviewed and considered in program development and implementation of automated speed enforcement.

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<sup>23</sup> Publicly available.

<sup>24</sup> Publicly available. Note that this guideline deals with speed enforcement overall, including automated and aerial enforcement.

## 5.0 Legislation and Regulations

### 5.1 Analysis of the Statutory Framework

The provisions in the yet to be proclaimed Traffic Safety allow for HRM to establish a program of photo enforcement. The legislation allows for electronic enforcement systems to be defined by regulation, including prescribing systems as being electronic enforcement systems; prescribing individuals as being law enforcement officers and prescribing any matter that needs to be prescribed in regulations to give effect to the use of electronic enforcement systems. Anything not covered in the regulation making authority (Governor in Council regulations) in section 5 would be covered in the section 79 regulation making authority (Minister regulations) respecting the use of electronic enforcement systems. In addition to the regulation making authorities in these provisions, and the provisions below, clause 45(1)(n) of the Traffic Safety Act authorizes the council of a municipality to make by-laws respecting the use of electronic enforcement systems. There are provisions throughout the Act that support the various components or underpinnings of the use of photo enforcement such as definitions, owner liability, plate registration, offences and so forth.

Section 311 of the Traffic Safety Act sets out provision for owner liability - when electronic enforcement systems are authorized to be used for the enforcement of the offence; when owner liability does not apply (the owner may satisfy the court that at the time of the offence someone else had possession of the vehicle without the owner's express or implied consent) and the limitation of consequences of conviction (no demerit points or driver licence suspension on conviction).

Section 312 sets out the evidentiary provisions related to the use of electronic enforcement systems. The section provides for the admissibility of the image in a proceeding commenced under the Summary Proceedings Act if the image shows the vehicle or conveyance and the number plate and it displays or has appended to it the prescribed information; for the image to be, in the absence of evidence to the contrary, proof of the number plate and the information and for a regime of testing of the electronic enforcement systems and certification of test results.

In summary, there are gaps in the overall legal framework that could impact both the development and the implementation of the HRM photo enforcement program. The gaps, however, can mostly be addressed through the timely drafting and disclosure of any draft regulations coupled with a collaborative approach to the development of a photo enforcement program between the Province and HRM. The gaps should more correctly be characterized as unknowns and mostly relate to the exercise of the regulation-making authorities by the Province in the yet to be proclaimed Traffic Safety Act.

In addition to the regulations, HRM Council may make one or more by-laws and take other actions as canvassed below. Provided that the regulations are made, and the HRM by-law passed, there is nothing specifically in the provincial legislative regime that would delay the development and implementation of a HRM photo enforcement program. The legislation sets out the necessary provisions to give effect to the use of photo enforcement. The Interpretation Act allows for the use of 'image' to be read in the plural so the electronic enforcement systems can, for example, produce multiple images. HRM Legal would need to opine on whether 'image' can include video versus still images and/or whether 'image' could be defined by provincial regulation to include video. As noted, some of the regulations are to be made by the Governor in Council and thus require Cabinet approval, which could impact both the timeline and the certainty of enactment. Other regulations are Minister's regulations, which generally can be considered on a shorter timeline than those requiring Cabinet approval.

Section 312 contains an apparent error as follows:

*(c): without proof of the signature or designation as a vehicle tester of the person signing the certificate.*

This provision should be amended to delete the word 'vehicle' and replace it with 'electronic enforcement system' to ensure that there are no challenges to whether a person signing the testing certification was designated or whether it is, in fact, their signature on the certification. Given information received that approximately 5% of persons charged in HRM proceed to trial, any such issue could be addressed through the evidence of the tester at trial as necessary. The preferred approach would be to amend the provision prior to proclamation; however the error in the wording does not preclude the development and implementation of the HRM photo enforcement program.

It is also noted that there are no statutory provisions specific to the introduction into evidence of an enlargement of the number plate portion. The necessity for an amendment to authorize the use of an enlargement at trial will depend on a number of factors including the opinion of both HRM Legal and Provincial Legal Counsel as to whether such a provision could be included under one of the regulation making authorities. Technically, an enlargement of the plate portion is not an image but is derived from an image. It is authorized to be used including introduction at trial as images captured by vendor systems do not always provide a completely clear plate. Images are not manipulated but the enlargement is literally just that – an enlargement of the plate portion along with enough of the vehicle to demonstrate that the enlargement was derived from the image. The need for provisions specific to enlargements can also be managed, all be it not ideally, by simply not processing images where the plate is not completely clear in the image captured.

Once it is determined which offences will be authorized to be detected through the use of photo enforcement, it will be necessary to prescribe the penalties. It will need to be

determined which category or categories the authorized offences fall under. While the exact amount of the available penalties may be relatively inconsequential in the context of the overall program design and development, HRM needs to be certain that the penalties will be established. Also, it is not known, at time of writing, whether the Province will prescribe penalties equal to those imposed on drivers for the same offences or whether, because there are no other consequences of conviction, the monetary penalties will be higher. Fines or penalties are canvassed in more detail elsewhere in this Study.

Another area that should be considered for amendment relates to the service of tickets. Pursuant to the Summary Proceedings Act, service of tickets occurs personally or by registered mail. Only in the case of parking infractions can regular mail be used to serve the notice that issues subsequent to the original ticket if payment is not received. Service by registered mail on vehicle owners of tickets for offences detected through the use of photo enforcement is excessive and costly. HRM should include the matter of service in discussions with the Province on other matters requiring amendment with a view to achieving service by regular mail by implementation.

It should be noted that the recovery of fines and costs in relation to the use of electronic enforcement systems is specifically set out in section 292 of the Traffic Safety Act:

*Where the fine revenue of Her Majesty in right of the Province or a municipality from convictions based on evidence from electronic enforcement systems exceeds the costs of acquiring and using the systems, Her Majesty or the municipality, as the case may be, shall use the surplus fine revenue for the purpose of enhancing road safety.*

With regard to the regulation making authorities in the Traffic Safety Act, a draft version of the regulation proposed to be made under the Act, and that was circulated as part of the consultation process, has been reviewed. That draft appears to focus on the regulation making authority in section 217 for the Governor in Council to make regulations governing traffic on highways; the use of highways and the use and driving of vehicles and other conveyances on highways. Provisions specific to photo enforcement were not included. There are other regulations provided for such as, for example, vehicle equipment and traffic devices. The draft – marked for consultation purposes only – does not represent the final version but provides some limited insight into the areas that have attracted the attention of provincial drafters. It allows for HRM to identify items that are not included, in addition to items that HRM may want or need to be included, to support a successful photo enforcement program. This will be explored elsewhere in this Study.

At the time of writing, there are no other draft regulations pertaining to electronic enforcement systems or, if any exist, they have not been shared with HRM. This is not surprising given that the Traffic Safety Act is, at time of writing, not expected to be proclaimed for another three to four years. The commitment of the Nova Scotia Government to both proclaim the legislation

into effect and to enact the necessary regulations is, obviously, critical to the deployment of electronic enforcement systems. That question transcends the content of this section. HRM needs to know that the regulations will be forthcoming within a reasonable time frame in order to better inform program development, budget submissions and HRM Council deliberations. Regulations are typically best developed following comprehensive dialogue with groups that are likely to be impacted by the content and are best prepared in a collaborative manner. If any of the necessary regulations are not made at all or are substantially delayed, the use by HRM of electronic enforcement systems in the near future will be frustrated.

While work on developing an HRM program can be started, the regulations supporting the use of electronic enforcement systems are a critical component to most aspects of the program. Without knowing the precise content of the regulations, either through the provision of draft or final versions, it will be challenging for HRM to complete the fulsome development of the chosen program model and to identify and procure vendor systems. Implementation or actual use of electronic enforcement systems to capture images and lay charges – or even to issue warning letters -cannot occur unless the necessary regulations have been enacted and take effect prior to the first date of use. It is recommended that HRM initiate discussions with provincial staff so that a firm timeline can be established and the necessary regulations can be developed in a collaborative, informed and timely manner.

To be clear, input into and knowledge of the proposed content of the various regulations identified below is required to fully develop a program of photo enforcement. Without this input and knowledge, HRM cannot complete program development which, in turn, renders implementation moot. In order to implement the use of electronic enforcement systems, all aspects of program development must be fully scoped out or completed. Some of the program development may overlap with implementation activities and those areas are noted below. Some of the provisions allow for either a regulation or a by-law. It is recommended that HRM staff, in preparation for the dialogue with provincial staff, review the related authorities for by-laws and determine those matters for which HRM will exercise the by-law authority and those matters that HRM would want the Province to address in regulations. Not all of the provisions provide the option but HRM staff need to ensure that there are no barriers to having the related by-law(s) brought before HRM Council for consideration and approval. The scoping out of what will be covered or addressed in an HRM by-law needs to be done in the early stages of program development even if the precise content or wording is developed later. To put it another way, the decision to use, where the option is provided, a regulation or a by-law must be an early one in relation to each of the authorities. The Province will need to make one or more regulations under the existing legislative provisions and HRM will need one or more by-laws. What to include in a by-law, where the option is provided, is best determined by HRM. A collaborative approach with regard to the content of regulations can proceed on that basis. This is an important milestone to reach as part of HRM activity relating to the procurement of equipment and related services.

Provincial regulations, which are explored in more detail below, could include such things as:

- ❖ Signage (advisory v. mandatory)
- ❖ Specific offences that are authorized including penalty amounts
- ❖ Specific places where the systems can be used/ not used (work zones, school zones etc.)
- ❖ Requirement to abide by guidelines, if any
- ❖ A provincial review similar to or more definitive than the Ontario Parliamentary review.
- ❖ Elements in the data box such as date, time, location and so forth but not the specific order or presentation of the elements
- ❖ Use of a marker (speed)
- ❖ Use of two images as required for the offence of failing to stop at a red light
- ❖ Defining “enlargement” and create provisions specific to the enlargement (which technically is not an image and is not otherwise provided for in the statutory regime).
- ❖ Forms for use specific to electronic enforcement
- ❖ Service provisions specific to electronic enforcement such as period of time, permitted methods of service and deemed service and the introduction of a notice of offence for owner liability offences
- ❖ Potential items, if any, related to the provincial court system.
- ❖ Include a provision permitting the use of a certified statement by the issuing law enforcement officer in order that the officer not be required to attend court (Ontario model)

The HRM by-law, which is explored in more detail below, could include such things as:

- ❖ Authorizing the use of specific platforms (ASE, RLC) – see also subsection 311(1) which would appear to require this
- ❖ Setting out the objectives for each platform being used
- ❖ Setting out the governing principles of site selection
- ❖ Establishing the dedicated road safety fund for HRM net monies, if any, from the use of electronic enforcement systems
- ❖ Setting out who the law enforcement officers are by class or category further to the definition to be established by the Province
- ❖ Setting out the length of use/ whether for pilot/ permanent
- ❖ Setting out a review and review period for each platform – including which departments or offices participate and which chairs
- ❖ Setting out that use of the systems continues during the review
- ❖ Providing for warning letters if HRM intends to use warning letters

- ❖ Setting out public notice if the province does not provide for same regarding site activation
- ❖ Establishing a commitment to transparency and public access to information/data. This could include HRM guidelines even if the Province issues guidelines
- ❖ Establishing an ombudsman- like office or complaints office to field site specific or general inquiries or complaints.
- ❖ Setting out provisions specific to HRM fleet, transit and other vehicles – do HR policies need to be revised? What is HRM’s commitment to compliance? What will be the consequences for HRM municipal vehicle operators?

The specific regulation making authorities, whether stand alone or incorporated in substantive provisions, are detailed and discussed below including an assessment of priority in relation to program development. References below to the ‘Act’ are to the Traffic Safety Act as passed in October 2018. Any future changes would require the information below to be refreshed. Also included are recommendations for improving the service of tickets and the admissibility at trial of certain evidence. As noted, service by regular mail is a change worth making before implementation. With regard to the evidentiary changes, it is acknowledged that the volume of images resulting in charges as well as the number of persons charged who proceed to trial may not warrant, at least in the early years of the program, such measures or changes.

The provisions of the Traffic Safety Act specific to the use of electronic enforcement systems, including the regulation making authorities, as well as other relevant provincial laws are included in the section entitled ‘*Technical Review of Relevant Legislative Provisions*’ found as an appendix to this Study.

## 5.2 Statutory Provisions and Regulation-Making Authorities

### Traffic Safety Act Sections 310, 311 and 312

The first two sections combined comprehensively address owner liability in the context of the use of electronic enforcement systems. Section 312 addresses certain evidentiary issues including testing of the electronic enforcement systems.

#### Section 310

This section of the Traffic Safety Act sets out the provisions regarding owner liability that apply not only to electronic enforcement, but to anything under the Act. It provides that the owner of the vehicle or conveyance is liable to the fine provided for the offence unless the owner satisfies the court that, at the time of the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner’s express or implied consent. It also provides for the liability of drivers to all the penalties and other consequences provided for the offence. The owner is not subject to the addition of demerit points or driver licence suspension unless the owner was the driver at the time that the offence was committed. It also provides that if the owner of the vehicle or conveyance is present at the time

the offence is committed by the driver, both the owner and the driver are guilty of the offence and liable to all the penalties and other consequences provided for the offence.

These two subsections will not apply in cases where the offence is detected through the use of electronic enforcement systems as there is no determination by such systems, or obtaining of evidence, as to the identity of the driver at the time nor is there an ability to determine the identity of persons present in the vehicle or conveyance at the time the offence was committed.

To prove that the person charged was the owner of the vehicle or conveyance when the offence was committed, the records of the Registrar of Motor Vehicles would be searched usually based on the offence date for the registered plate holder as of the date of the offence. This in turn allows the issuing officer to form the belief that the owner of the vehicle or conveyance committed the offence – because the person or other entity was the owner on that date. In the case of plate inquiries, it is understood that the Nova Scotia Registrar of Motor Vehicles confirms the registered plate holder on a specific offence date and certifications with that information have been reviewed. Certified proof of registration is requested for matters proceeding to trial.

Parking enforcement is also based on owner liability. It is understood that, for parking infractions, the registered owner can dispute that they were, in fact, the plate holder at the time of the offence and an opportunity is provided for the person to raise that issue and, in turn, for the issuing officer to run another check on the plate registration with the Registrar of Motor Vehicles. The number of persons changing their plate registration the same week they get a ticket is reported to be relatively small. The vehicle owner who receives a parking ticket can contact HRM staff to advise that it was not their vehicle at the date and time of the offence. HRM staff then query the JEIN<sup>25</sup> system to investigate where this is true or not. The JEIN access allows HRM staff to see vehicle plate and vehicle history. HRM staff are also able to confirm the information with the Registrar of Motor Vehicles. HRM staff are able to change the related information in the AIMS system (the parking case management system) to reflect that plate ownership has changed - a change of responsibility for the plate. HRM staff advised that, as a result, if the person receives a ticket again the correct vehicle owner will be identified. While this process may work well for parking, it is unclear what the impact would be in the context of photo enforcement. Admittedly a similar process could be used especially as the issuing law enforcement officer is not completing a certified statement but only the form of ticket. The initial ownership information received from the JEIN system could be used to lay the charge and a process triggered by owners receiving tickets in instances where the person claims to not be the plate holder on the date of offence. The cost of having staff attend to this may be relatively minor or more considerable depending on the actual volume of electronic enforcement tickets issued. This function may need to be factored into the work of the processing centre.

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<sup>25</sup> The Justice Enterprise Information Network.

At trial, or if certified statements are implemented in the future, certified proof of ownership or plate registration is needed to prove the identity of the person charged. To avoid unnecessarily using administrative effort to void charges where ownership of the vehicle or conveyance changes within days of the date of offence and proof of same was determined, it would be useful if the proof of ownership or plate registration was accessed and stated to be as of the date of offence. As accessing plate information through JEINs has been equated with accessing the Registrar of Motor Vehicle's records directly this may not be an issue. It is not within the scope of this Study to determine whether this change is achievable in the short or long term or the costs associated with any such change. At the end of the day, the existing process is manageable and works, apparently, for both HRM and the public who receive tickets in error.

If HRM intends to pursue the use of certified statements, in lieu of issuing officers or special constables testifying at trials in person, it is recommended that the change to date of offence be explored so that the defendant information can be included in the certified statement in relation to the date of the offence. To support the use of a certified statement by the issuing officer, HRM may wish to discuss with the Province the use of a new form of ticket for service on persons charged with an owner liability offence where a photo enforcement system is used. It may be informative to review copies of charging documents used in other jurisdictions, including the Ontario charging document used for automated speed enforcement, which is publicly available.

### **Section 311**

This section sets out specific provisions in relation to owner liability and the use of electronic enforcement systems. It sets out the necessary nexus to establish that the registered owner or plate holder is liable. If an electronic enforcement system detects an authorized offence, and the number plate is captured by the system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable to the fine provided for the offence. This section limits the use of electronic enforcement systems to the detection or capture of images of offences for which the use of such systems has been authorized.

Subsection 311(1):

*Where a vehicle or other conveyance is involved in an offence for which an electronic enforcement system is authorized to be used for enforcement pursuant to this Act and the regulations or by-law, and the number plate is captured by an electronic enforcement system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable on summary conviction to the fine provided for the offence.*

This subsection requires that there be a list of the offences that can be enforced through the use of electronic enforcement systems. It would be anticipated that this list would include the offences that HRM wants to enforce in this manner – speeding and failing to stop at a red

light.<sup>26</sup> The use of the electronic enforcement system or systems must be authorized by the Traffic Safety Act and the regulations or the by-law. It is impossible for any municipality to develop an effective electronic enforcement program without knowing which offences the province is prepared to authorize to be enforced using such systems.

Subsection 311(2) sets out trial-related provisions. In summary, owner liability does not apply if the owner satisfies the court that, at the time that the vehicle or other conveyance was involved in the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner's express or implied consent. This provision does not affect the ability to lay the charge. Instead, it sets out the legal test to be applied in court to negate owner liability.

Subsection 311(3) limits the consequences of conviction for the owner. A person who is guilty of an offence as the result of the use of electronic enforcement systems is not subject to either demerit points or a driver licence suspension. In other words, the person is only liable to the fine or penalty. It is recommended that HRM ensure that this is clearly and repeatedly communicated to help ensure that persons charged understand the limited consequences. Clear and consistent communication on this point will help prevent the trial rate from unnecessarily spiking.

## **Section 312**

The evidentiary provisions supporting the use of electronic enforcement systems are set out in this section.

Subsection 312(1):

*An image obtained through the use of an electronic enforcement system is admissible in evidence in a proceeding commenced pursuant to the Summary Proceedings Act respecting an alleged offence if the image (a) shows a vehicle or conveyance and the number plate displayed on it; and (b) displays, or has appended to it, the prescribed information in relation to the provision.*

In summary, subsection 312(1) provides that an image obtained through the use of an electronic enforcement system is admissible at trial if the image shows the vehicle or conveyance and the number plate displayed on it and the image displays, or has appended to it, the prescribed information in relation to the provision.

With regard to the number plate, this requirement is straightforward in that no charge should be laid without the number plate being clearly shown on the image. Electronic enforcement systems have to have owner liability as the underpinning for the identification of the person to be charged. That is because the systems take images of the licence plate that is affixed or

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<sup>26</sup> Offences related to the use of transit lanes could also be included if HRM decides to pursue that enforcement.

attached to the rear of the vehicle or other conveyance. The systems do not intentionally capture persons, such as the driver or any passengers. The alpha numerical characters are then queried in the records of the Registrar of Motor Vehicles for the jurisdiction that issued the plate to determine the registered plate holder for that licence plate. As noted, it is the underpinning of owner liability. It is understood that presently only registered plate holder information respecting plates issued by Nova Scotia is provided.

As the image must show the vehicle or conveyance and the number plate displayed on it, only vehicles or conveyances that must display or have a number plate can result in charges. It is often misunderstood that anything can be charged using photo enforcement and when bicycles, for example, fail to stop at a red light, the assumption may be made that the bicycle can be charged. Another example is tractor trailers where the cab might be licenced but the trailer is not. Section 2 of the Traffic Safety Act defines a conveyance to mean anything in, on or by which any person or property is or maybe transported or drawn on a highway and includes a number of things, including a vehicle and bicycle and any other thing prescribed by the regulations. Some of the things included cannot be charged using photo enforcement as there is no number plate attached. This would include personal transporters, bicycles, off-road vehicles and so forth.

With regard to the image displaying prescribed information, or having the prescribed information appended to it, in relation to the provision creating the offence, this is standard across the use of automated enforcement as noted elsewhere in this Study. Vendors today have sophisticated data boxes that superimpose data related to the offence at the time that the image is captured. Some of the data relates to the commission of the offence such as date, time and location. Other data relates to so-called essential elements of the offences being enforced. For example, for speeding offences, the data box would show the posted speed limit, as applicable, and the rate of speed that the vehicle was travelling at the time that the image was captured. For failing to stop at a red light, the data box includes the length of the amber light and the time that the light had been red when the image of the vehicle proceeding through the intersection was taken. The speed of the vehicle at the time is shown to prove that the vehicle was in motion. This is essential if videos are not being tendered in court. Nothing should or needs to be appended to the image or images and it is recommended that HRM work with the Province to ensure that the prescribed information consists of elements that can be shown or superimposed on the images. Care should be taken to either make the list permissive in nature or, if that is not possible, to list only critical data elements. Images produced as a result of the use of electronic enforcement systems should, in conjunction with the data shown or superimposed, prove the commission of the offence.

The Province will need to make a regulation to give effect to clause (b) – the prescribed information that must be shown or appended to the image obtained through the use of the electronic enforcement systems. While the information that will need to be included in the so-called data box is relatively straightforward to anticipate, the list of such information can be

inconsistent with vendor capabilities or even prosecutorial needs if there is no dialogue between HRM Transportation and other related HRM departments. This will better inform the dialogue with the Province regarding this important detail. The discussion can also be informed by reviewing the data shown or superimposed on sample images from the most recent program related to automated speed enforcement – Ontario’s program – as well as other programs including red light or intersection safety camera programs. While conflict with vendors in relation to data on images has been minimized in recent years, HRM does not want to be limited in the selection of vendors. As noted, consideration should be given to what data or information must be shown or appended to images versus what information may be shown or appended. The mandatory list should be minimal.

Another consideration here, in relation to speed enforcement, is whether the prescribed information would include a vehicle marker – that the image must show a mark or other indication on the vehicle detected exceeding the posted speed limit. The information being conveyed by the marker would be which vehicle was speeding. Such a mark, and the regulatory authority requiring it, has proven invaluable in Ontario in establishing, beyond a reasonable doubt, which vehicle in an image was captured exceeding the posted speed limit (especially if the image shows multiple vehicles). Images in which the mark is not located where it should be in relation to the vehicle do not result in charges being laid. The appearance of the mark effectively overlapping the bottom rear portion of the vehicle acts as an indicator that the automated enforcement system captured the right vehicle. The mark would be displayed on the image and, subject to the opinion of legislative counsel, would fall within the regulatory authority. It is recommended that a mark or other indicator be included in the regulation as part of the prescribed information to be displayed on the image obtained through an electronic enforcement system for speed.

As for ‘displays or appended to it’ all automated enforcement systems have the information in a so-called data box that is shown or superimposed on the image(s). It is recommended that HRM avoid appending information to the images unless it is absolutely necessary. Appending information will lead to errors and those errors are unnecessary. In Canadian jurisdictions using automated enforcement to detect and prosecute failing to stop at a red light or speeding offences, the images along with the data shown or superimposed on the images effectively prove the commission of the offence. There may be related detail set out in a certified statement or given in court when the issuing officer testifies but, in the final analysis, it is the image that tells the story of the commission of the offence. The data boxes also connect to the credibility of the system/images. The data matches the image and the image matches the data – if that is not the case a charge is not laid.

Subsection 312(2) sets out an additional evidentiary provision.

*In the absence of evidence to the contrary, an image as described in subsection (1) is proof of the number plate displayed on the vehicle or other conveyance and of the information displayed on the image or appended to the image.*

This provision effectively allows for the image captured by the electronic enforcement system showing the number plate and information displayed on or appended to the image to be proof, in the absence of evidence to the contrary, that it was the number plate displayed and that the information displayed or appended is true. There are related provisions, noted above, that protect a person from being convicted if the plate was not registered to them at the time of the offence or if someone else had the vehicle or conveyance in their possession at the time.

The provision appears to assume that images captured by electronic enforcement systems are sufficient and provide clear, readable images of the number plate displayed on the vehicle in the image. In practice, it should be kept in mind that the image should not be enhanced in any way during the processing function. The reviewing law enforcement or issuing officers have to be able to establish the number plate and jurisdiction from the image. As noted above, the use of enlargements of the plate portion of the vehicle are common to establish the alpha numeric characters of the plate as well as jurisdiction. To be clear, the enlargement is not an enhancement or digital or other manipulation of the original image. Without the inclusion of such enlargements in either the legislative or regulatory framework to allow for admissibility at trial, the number of images that result in charges being laid will be diminished.

Subsection 312(3) sets out provisions regarding the testing of electronic enforcement systems including the authority for certifications with regard to the testing of the electronic enforcement systems.

*(3) In any prosecution based on evidence obtained through the use of an electronic enforcement system, a certificate*

*(a) stating the result of the test of the electronic enforcement system identified in the certificate;*

*(b) stating that the test was conducted at a specified time that is within the time prescribed in the regulations or the by-law before or after the date of the offence charged; and*

*(c) purporting to be signed by an electronic enforcement system tester who is authorized by the regulations or a by-law to test electronic enforcement systems of the type identified in the certificate,*

*is, in the absence of evidence to the contrary, admissible in evidence as proof of the facts stated in the certificate without proof of the signature or designation as a vehicle tester of the person signing the certificate.*

Overall, there is no need to test an electronic enforcement system. The image or photograph, along with data shown or superimposed on the image or photograph, is proof, in the absence of evidence to the contrary, that the system was working properly at the time that the image was captured by the system. If an image is not produced, or if there are substantive issues with the image, the electronic enforcement system was not working properly. It should be noted

that such systems take so-called test shots at the start and end of the deployment; however, those shots are taken by the system itself with no human intervention at the site.

So-called test shots largely relate to the contractual requirements and also demonstrate to whoever is about the view the actual incident images that the system has captured images at the specified location that should meet the quality required for image review. If there is an issue with the test shots the images on the related USB key or download are not processed and the entire stick/file is rejected. The electronic enforcement system may have been working properly; however, the images, based on the test shots, are not as expected. For contractual and other purposes, the distinction between the electronic enforcement system working properly and images that can form the basis of charges and successful prosecutions is an important one.

Red light camera systems are not known to be subject to any testing regime. It would be unprecedented to test these systems as the measurement of speed as shown in the data box is not used to prosecute the owner for the offence of speeding. If HRM intends to use red light camera systems, it will be necessary to address this testing regime through an amendment to eliminate it for red light camera systems. For red light camera systems in particular the very fact that the two images are captured with the red signal indication shown is proof that the systems themselves were working. Put another way the capturing of the images with the data shown or superimposed and the red signal indication is shown is, in fact, the test that the systems were working. There are no components or aspects to test.

The discussion changes somewhat if HRM intends to use intersection safety cameras to detect speeding vehicles and to lay a charge of speeding. It also changes if HRM intends to use electronic enforcement systems to enforce speeding on roadways. It is the allegation that the vehicle or conveyance was being operated at the time that the image was taken that changes the necessity for testing. Systems that detect speeding vehicles have a speed measurement component of either lidar or radar. It is the speed measurement component and the accuracy of that component that requires testing – not the system itself. There are options regarding how this is currently done in jurisdictions with automated speed enforcement; however, in the context of this Study, it is assumed that HRM will want to address this aspect in the context of a fair and transparent program.

Section 7 of the Motor Vehicle Act sets out provisions for the testing of speedometers on motor vehicles and other devices used for or in connection with establishing the speed of vehicles. Subsection 7(2) provides:

*In any prosecution under this Act, a certificate purporting to be issued by a tester appointed under subsection (1), bearing a date thereon not more than thirty days before or after the date of an alleged offence charged in the information or complaint, signed by the tester, and stating therein the results of a test of the speedometer on the motor vehicle or other device mentioned therein, is admissible in evidence as prima facie proof of the accuracy of the speedometer or other device as stated in the certificate on the date of the alleged offence in the information or complaint.*

Even without this background, having proof with regard to the accuracy of the speed measurement component of an electronic enforcement system used to detect speeding is critical to enable prosecutors to prove the offence of speeding beyond a reasonable doubt. It is the detail of the testing regime that will need to be established ranging from who the testers can be through to the frequency or interval of the testing. The certificate of the tester – or certificate of accuracy- would be available to the law enforcement or issuing officers reviewing the images and laying charges. It also would be available evidence at trials to be tendered by the prosecution and available by the general public through the HRM photo enforcement website

In summary, one model would see the testing of the speed measurement component being undertaken by police officers who would undertake a comparison, in a test environment of a closed road, of the visually observed cruiser speedometer versus the speed recorded by the electronic enforcement system when the cruiser drove past the system. Alternatively, an officer with a handheld speed measurement device could measure the speed of the cruiser at the exact same time that the system captures the image and the two speed “readings” could be compared. While this seems relatively straight forward, this model presents numerous issues. First, it requires that the police be engaged in the testing –a requirement which might negatively impact resources and which does not fall within a policing mandate. Second, the electronic enforcement system being tested would have to be relocated to the site of the testing. Third, what will happen with regard to any discrepancies? Will they be blamed on the electronic enforcement system or the use, including set up, of the police speed measurement equipment? Fourth, there will have to be policies and decisions made regarding minor discrepancies. For example, some electronic enforcement systems have a +/- 1kph margin of accuracy whereas some devices used by police services can exceed that. Having HRM employees certify the accuracy will not necessarily reassure the public with regard to the accuracy.

Another model is to have the vendor return the speed measurement component to the manufacturer of that component for testing and certification as to accuracy. This model sees the work associated with the accuracy of the speed measurement device borne by the vendor. In turn that encourages vendors to ensure that the selected speed measurement component is as accurate as it can be – +/- 1kph. The rate of speed resulting from police use of speed

measurement devices is considered accurate provided that the officer can testify that they set up and used the equipment according to the manufacturer's instructions. Having the manufacturer check and certify the accuracy of this component of the system is consistent with that testimony in traditional speeding trials. A variation of this model could see an independent testing laboratory certify the accuracy of the device. This variation could be necessary depending on the specific vendors.

It is recommended that HRM include who can test electronic enforcement systems in an HRM by-law as authorized as opposed to a regulation. As previously noted, this will give HRM some flexibility as opposed to the regulatory path. There are limited options available when it comes to testing the accuracy of the speed measurement component of the system. Police services are unlikely to want to engage in any such activity and it should not be assumed that either the Halifax Regional Police or the Royal Canadian Mounted Police will want to be involved. Without police involvement, independent testing laboratories or the manufacturer of the speed measurement component are the most credible sources of testing. One option, depending on the vendor, would be to have an independent laboratory, such as one that might test police speed measurement devices, test the accuracy of the speed measurement component and complete a certification to that effect.

Another option is to have the manufacturer of the speed measurement component provide a so-called 'out of the box' certification of accuracy followed by successive certificates of accuracy. The Ontario certificate of accuracy issued by the manufacturer of the speed measurement component is publicly available for review of what such a certificate might contain. Once every 12 months the accuracy is certified which requires that the vendor have some extra components that can be swapped out for components undergoing certification. Early identification of the responsibility for testing will help to ensure that the vendor bears the cost and responsibility. It is recommended that HRM ensure that testing is a vendor responsibility.

No charges should be laid unless the law enforcement or issuing officers can view a certificate of accuracy issued within the set period of time. If the date of the offence falls outside of the required time frame of the certificate of accuracy, a charge should not be laid as the matter could not be prosecuted at trial.

Before getting into testing, it is recommended that HRM, in consultation with the local police services, establish an acceptable accuracy for the speed measurement component. The procurement for systems should stipulate the accuracy of the speed measurement component that the vendor will be using in the system. It is not uncommon for automated speed enforcement systems, as they are commonly known, to have an accuracy of +/- 1 kph. The speed measurement component is delivered with a certificate as to that accuracy and is re-certified to that accuracy. More detail can be found by reviewing the International Association

of Chiefs of Police (IACP) Guidelines for the use of such systems which is a publicly available document.

Clause 312(3) (b) allows for the time within which tests of any components of the electronic enforcement system are to be conducted to be prescribed by regulation or the by-law. Presumably this option was included because the specific detail pertaining to testing time frames might not be known when the regulations are made. Whether the testing time frame is in a provincial regulation or HRM by-law, the time frame needs to be established before inclusion in a regulation or by-law.

The determination of the testing time frame is an internalized HRM decision that needs to be made in conjunction with the police, a consideration of the sustainability and practicality of the testing regime coupled with which system is being tested. The time frame will depend on the testing model chosen for the testing program. As part of that decision making, the HRM Police Service must be consulted. The decision making may also include what individual vendors are prepared to do to facilitate the certification process. What other jurisdictions do in relation to this time frame is not nearly as important as the practicalities of the HRM preferred model.

Local, in person checks or tests of speed measurement accuracy are dependent upon the year-round availability of resources to conduct those tests. Weekly or monthly time frames may not be consistently achievable. Annual testing, however, can be accomplished over time on a rotation of devices. Systems can be ‘swapped out’ for deployment depending on whether the testing has been completed or is delayed. It is recommended that HRM provide for the testing in a by-law, including the timing and who is authorized to conduct the testing, as the by-law could be enacted and/or amended in a timelier manner, if necessary, than a provincial regulation. This would allow for a content specific testing regime to be finalized closer to implementation specific to speed and after the procurement process.

The certification is to be signed by an electronic enforcement system tester who is authorized by the regulations or a by-law to test electronic enforcement systems of the type identified in the certificate. If it is signed as required it is admissible, in the absence of evidence to the contrary, in evidence as proof of the facts stated in the certificate without proof of the signature or designation as a vehicle tester of the person signing the certificate. As noted elsewhere, there is an apparent error in the wording in Section 312: without proof of the signature or designation as a vehicle tester of the person signing the certificate. This should be amended to change the word ‘vehicle’ to ‘electronic enforcement system’ but does not preclude implementing the HRM program.

As noted, the Ontario certificates of accuracy are publicly available. The certificate of accuracy for an automated speed enforcement device is posted on the municipality’s web site so that anyone can view the certifications based on the site location. Ontario law requires that the devices be tested for accuracy once every twelve months and that there is a certificate of

accuracy dated within twelve months of the date of the offences for the device being deployed. Issuing officers simply look up the certificate of accuracy for the device, which in turn allows them to issue charges because they know the device measured the speed of the vehicle accurately at the time of the offence. Posting the certificates on a publicly accessible web site is part of the transparent program. It is recommended that HRM consider posting the certificates of the tester of electronic enforcement systems that are used to detect the offence of speeding on a publicly accessible web site so that anyone can see HRM's adherence to the certification requirement.

## 5.3 Stand-Alone Regulation Making Authority

### The Traffic Safety Act

#### Sections 2 and 5

Section 2 defines an “electronic enforcement system” as meaning an electronic system prescribed by the regulations.

Section 2 has to be considered in conjunction with Section 5, which states:

*The Governor in Council may make regulations respecting the definitions set out in Section 2 including, without limiting the generality of the foregoing,*

*(j) prescribing systems as being electronic enforcement systems*

*(l) prescribing individuals as being law enforcement officers;*

*(za) prescribing any other matter that is to be prescribed by the regulations.*

Sections 2 and 5 of the Traffic Safety Act allow for electronic enforcement systems to be defined and prescribed. These provisions will allow the Province to either prescribe what constitutes an electronic enforcement system or to prescribe the actual make and model of such systems for each method of deployment or both.

There are options available in prescribing electronic systems in the regulation. One would be for the Province to prescribe the actual make and model of each electronic enforcement system that HRM intends to use. This would effectively be similar to the prescription of breath testing equipment used for criminal matters and would effectively minimize challenges to the actual systems in use. It would require HRM to complete the HRM procurement process, including proof of performance, for all electronic systems that HRM intends to deploy so that the province would have the various makes and models to be included in the regulation. Another option would be for the regulation to provide for the components or features of each type of electronic enforcement system without naming makes or models. For example, for electronic enforcement systems to detect vehicles exceeding the speed limit, the regulation could provide that a system is an electronic enforcement system if it consists of a combination of a camera and speed-measuring equipment that can be used to take a photograph of a vehicle and

determine and record the rate of speed at which the motor vehicle is travelling at the time the photograph is taken.

There are advantages to having the actual systems prescribed as opposed to a description of characteristics or functions in the regulations but there are also disadvantages including:

- ❖ The delay in getting the electronic enforcement systems regulation finalized: HRM would need to complete procurement including proof of performance and then inform the Province of the outcome so that the actual equipment could be included in the regulation. This approach would be preferable to requiring the regulation to be amended on the cusp of implementation.
- ❖ Prescribing specific makes and models for both the speed and red light electronic enforcement systems at the same time will obviously require, in the case of separate systems, HRM to complete the procurement, including the proof of performance phase. If one system is prescribed with the intent of having the second prescribed by amendment to the regulation later, HRM would have to potentially deal with shifting provincial staff or even political opinions on prescribing devices and timing issues. HRM could end up in the same situation as Ontario, where some automated enforcement devices are prescribed and some are not prescribed. If there is an issue with the program, or use of the electronic enforcement systems that coincides with an HRM request to add systems to the regulation, that request would likely be denied until, at minimum, everyone is satisfied that the concern is resolved and that the program should continue.
- ❖ The Nova Scotia government may have concerns or reservations about prescribing the actual systems that can be used. HRM Procurement and others may also have concerns about specifying certain systems in the regulations, or even the by-law. There are implications in relation to procurement that must be identified and considered prior to any request being made by HRM.

If the electronic enforcement systems will not have the evidentiary benefit of prescription, similar to federal breath testing equipment, there will be features that will need to be specified or provided for in the regulation to ensure that the use of the systems supports the prosecution of charges as well as the overall longevity of the HRM electronic enforcement system program. It would be reasonable to anticipate that the Governor in Council regulation made under the authority of section 5 will prescribe, at minimum, the characteristics of, or a definition of, the electronic enforcement system.

It is recommended that HRM staff internally discuss how best to proceed in this regard and, when a preference is determined, that it be communicated to the Province. The Province may also have an opinion. This is an example of the many aspects of the use of electronic

enforcement systems that will benefit from an early, informed and collaborative approach to the drafting of the related regulations.

The regulation made under the authority of section 5 can also prescribe individuals as being law enforcement officers. It is clear, both from experience and interviews, that police officers will not perform the review of images and the laying of charges; however, it is less clear with regard to whether the class of people who do this function have to be employees of HRM or the Halifax Regional Police or whether persons employed by a vendor can perform some or all of the processing and charging functions.

The authority in section 5 effectively leaves it open to decide what category of law enforcement can review images and issue charges. Under the existing provincial law, police officers and special constables would appear to be the two categories that could be authorized by the Province to do this work – enforce provincial summary offences. The regulation making authority would also appear to allow for employees of vendors or third parties to be ‘law enforcement officers’ for the purpose of reviewing images obtained through the use of electronic enforcement systems and to lay the related charges.

The Province could provide for more than one category or class of law enforcement officers in the regulation. For example, the regulation could limit the authority of employees of vendors, if defined as law enforcement officers, to tasks associated with the images and related data arriving for processing, including review of the images, and not include the laying of charges as part of their authority. Instead, the laying of charges, and possibly the access to the records of the Registrar of Motor Vehicles, could be prescribed to be within the mandate of special constables, who would be employees of HRM. This is just one example of the level of detail and consideration that will be required to scope out how HRM wants to proceed with the use of electronic enforcement systems.

The authority to prescribe by regulation individuals as being law enforcement officers is consistent with the definition of ‘peace officer’ in section 2 of the Traffic Safety Act:

*“peace officer” means a person authorized to enforce this Act and includes a motor vehicle inspector, a police officer and a person prescribed by the regulations”*

It is also consistent with the authority, in section 78 of the Traffic Safety Act, for the Governor in Council to make regulations:

*(b) respecting peace officers and their authority in relation to traffic safety including, without limiting the generality of the foregoing.....*

HRM will have to first decide on a program model, as described elsewhere in this Study, or at least a preference. The program model will drive who, by classification, HRM needs to be

authorized to review images and lay charges. The program model is not definitive in resolving the question and HRM will need to consider the applicable statutory provisions that otherwise govern who can do what in terms of law enforcement activities. In addition, who can access JEINs or the Registrar of Motor Vehicle's data base is an important and critical consideration.

Alternatively, HRM may need to persuade the Province to prescribe a new class or category of law enforcement officer. For example, should HRM choose a vendor operated model the Province would be asked to define employees of the vendor to be law enforcement officers. It is not recommended that HRM ask that the regulation include named individuals. Provincial regulations can take time to amend and, generally speaking, are not considered to be more immediately responsive. Naming the individuals in a regulation will undoubtedly have implications in terms of pay classification as well as mobility in terms of employment.

Individuals can come and go and having the names appear will become problematic in relatively short order. The regulation should define a class of individuals as law enforcement officers. A review of the related provisions of the Police Act is helpful. Should the Province enact a regulation authorizing any of the specific classes listed below, it will be necessary to ensure that the wording specifically excludes the applicability of certain provisions in the Police Act as noted.

The Nova Scotia Police Act provides, in Section 89:

*(1) The council of a municipality that has its own police department pursuant to Section 36 may, with the approval of the Minister or a person designated by the Minister, appoint one or more by-law enforcement officers who have the authority of a peace officer only with respect to the enforcement of the by-laws of the municipality.*

If HRM were to consider using by-law enforcement officers to process images and lay charges, HRM may need provincial approval in order for the HRM Council to appoint by-law enforcement officers unless the electronic enforcement system regulation specifically authorizes otherwise. The authority of municipally appointed by-law enforcement officers to review images and lay charges must be clear in order to avoid arguments that the processing or review of images is not the "enforcement of a by-law". Absent specific wording in the regulation, by-law enforcement officers are otherwise limited to enforcing HRM by-laws.

A more likely option would be the authorization of special constables. This option appears to allow for the most scope in terms of who employs the individuals which, in turn, supports a vendor or hybrid model as describe elsewhere in this Study.

The Police Act provides, in Section 88:

*(1) The Minister or chief officer with the approval of the Minister may*

- (a) appoint special constables as necessary;*
- (b) define the offices, positions, territorial jurisdiction and duties of special constables, generally or specifically;*
- (c) make rules and regulations governing the qualifications, office, position, duties, conduct and discipline of special constables and any other matter concerning special constables;*
- (d) suspend or revoke the appointment of a special constable*

*(2) Subject to the limitations of the appointment under subsection (1), a special constable is, while discharging the responsibilities and exercising the powers of a special constable, a peace officer.*

*(3) Before the suspension or revocation of the appointment of a special constable, the special constable shall be given reasonable information with respect to the reasons for the suspension or revocation and an opportunity to reply orally or in writing as the Minister or chief officer may determine.*

*(4) The employer of a special constable is responsible for ensuring that the special constable fulfils the duties imposed by this Act and the rules and regulations made pursuant to this Act and exercises the power and authority conferred by this Act and the appointment in a proper manner.*

*(5) The employer of a special constable is liable in respect of a tort committed by the special constable in the performance of the special constable's duties.*

This class – special constable – would appear to most closely align to who could be authorized as law enforcement officers. It does not appear, for example, that the employment of a special constable is restricted to a public entity per se. This may require further exploration if HRM intends to use a Complete External Contract model to ensure that the province is open to appointing employees of vendors as special constables. Alternatively, if the municipal or hybrid model is chosen, employees of HRM could be designated as special constables and special constables as a class could be authorized to use electronic enforcement systems.

Section 90 of the Police Act is relevant irrespective of which persons are authorized:

- (1) The appointment of a special constable or by-law enforcement officer pursuant to Section 88 or 89 must be in writing and state clearly the territorial jurisdiction and duties of the special constable or by-law enforcement officer, and the person's authority as a constable or peace officer are only as stated.*
- (2) The territorial jurisdiction of a by-law enforcement officer does not extend beyond the boundaries of the municipality to which the officer is appointed.*
- (3) Every special constable or by-law enforcement officer, before entering upon the person's duties, shall take and subscribe such oath or affirmation as is prescribed by regulation.*

Sections 7, 9 and 10 of the related Police Regulations will also have to be considered. Section 7 of the Regulation sets out the qualifications for appointment. If a vendor or hybrid model is chosen, it will be necessary to ensure that vendors have been advised in advance in writing of the qualification requirements. Section 8 requires that certain records be kept in relation to the appointment and that the records must be produced on request by the province.

Sections 9 and 10 would appear to impose administrative burdens on HRM in relation to this new group of authorized law enforcement officers; however, what is set out in these sections are, effectively, best practices and would be recommended in any event. It is advisable that HRM staff proceed to develop the items listed in these provisions irrespective of the model or class of law enforcement chosen.

Section 9:

- (1) A municipality that appoints a special constable or by-law enforcement officer must establish policies and procedures specifying the authority, responsibility and duty of the special constable or by-law enforcement officer and must provide the policies and procedures to the Minister in writing, for the Minister's approval.*
- (2) A municipality must not carry out a policy or procedure established for a special constable or a by-law enforcement officer unless it is approved by the Minister.*

Section 10:

- (1) Before reappointing a person as a special constable or by-law enforcement officer, the chief officer must evaluate the person's performance as a special constable or by-law enforcement officer since their appointment or most recent reappointment.*
- (2) A municipality must keep records of all performance evaluations conducted under subsection (1), and must provide the records to the Minister on request.*

The regulation to be made under section 5 of the Traffic Safety Act can include other matters related to the use of electronic enforcement systems. This broad regulation making authority on the part of the Governor in Council requires coordination and collaboration in the context of other regulation making authorities provided for in relation to the use of electronic enforcement systems.

## **Section 79**

Section 79 of the Traffic Safety Act provides that:

*The Minister may make regulations:*

- (e) respecting the use of electronic enforcement systems;*

Section 79 allows the Minister to make regulations respecting the use of electronic enforcement systems. The Province will need to delineate what matters related to the use of

electronic enforcement systems will be prescribed pursuant to section 5 and which will be prescribed pursuant to section 79. For example, is the prescribed information in relation to the offence, in clause 312(1) (b) that is to be displayed on or appended to the image, a matter for the Governor in Council or Minister's regulation? A similar question arises in relation to the certification of the tester – prescribing who is authorized to be a tester as well as the time period in which the systems must be tested.

This regulation making authority can be exercised by the Province to set out detail regarding the use of electronic enforcement systems. In theory, this regulation could prescribe that such a system, when used to detect failing to stop at a red light, can produce multiple images providing clarity that an electronic enforcement system used in relation to red light running can produce sequential images and the related data is critical to eliminating challenges to the reliance on multiple images by the prosecution. For the offence of failing to stop at a red light, two sequential images are needed for each incident. The first image will show the vehicle approaching the intersection and the second image will show the vehicle in or through the intersection (depending on speed, the vehicle may not appear in the second image). This regulation could also provide for an enlargement of the plate area of the vehicle to be tendered in evidence. If the provincial regulation does not address these matters, it is recommended that HRM approach the Province to amend the statutory provisions.

### **Other Regulation Making Authorities**

The Traffic Safety Act sets out other provisions, including regulation making authorities, that may impact the development and implementation of the HRM photo enforcement program. For example, a regulation making authority is found in subsection 59(2) of the Traffic Safety Act. It requires information to be provided or reports to be made to the Registrar or Provincial Traffic Authority pertaining to traffic safety matters, collisions or such other matters as may be prescribed by the regulations. It is not known, at time of writing, what reports could be prescribed by regulation in relation to HRM's use of electronic enforcement systems. It would be reasonable to anticipate that there will be a reporting requirement and to build the processing side to be able to generate various measurements. Irrespective of the method used to require reports, it is recommended that HRM develop internal reporting systems that would allow for any number of reports to be generated in anticipation of the Province requiring reports and also to meet public and media demand for data related to the program.

Sections 319 and 323 are also relevant to the use of electronic enforcement systems by HRM.

Section 319 provides that the Minister may make regulations

*(vi) prescribing the purposes for which and the persons to whom the Registrar may disclose some or all of the information in the Registrar's records as permitted under an information sharing agreement,*

Section 323 is permissive in nature and provides that the Minister may make regulations respecting fees payable in relation to anything done under this Act and the regulations.

These two provisions should be kept in mind in terms of whether the Province will need or want to prescribe by regulation the purpose of sharing with HRM plate registrant information from the Registrar of Motor Vehicles pursuant to an information sharing agreement. It is recommended that HRM staff discuss with the Registrar of Motor Vehicles whether the status quo regarding the provision of ownership information will change and whether there is a need for an information sharing agreement specific to the use of electronic enforcement systems. Additional information should be sought including audit and privacy requirements and who, by classification, can have access to the information. The advent of a program of photo enforcement in HRM may also trigger a review or consideration of fees, if any, imposed by the Province to provide both uncertified and certified information. The fee, if any, for HRM to access plate registrant information pursuant to an information sharing agreement or otherwise is an important component of costing.

Section 297 of the Traffic Safety Act sets out the authority for other agreements that may need to be executed between HRM and the provincial government. Specifically, subsection 297(3) provides that the Minister may enter into an agreement with any person in the Province in relation to any matter to which this Act relates for any purpose consistent with the purpose of this Act. Given the wide range of regulation making authorities, coupled with possible measures such as provincial guidelines, it is difficult to envisage that the Province would execute an agreement under this section.

## 5.4 Authority for HRM By-law

HRM is, pursuant to section 45 of the Traffic Safety Act, authorized to enact a by-law respecting the use of electronic enforcement systems. Subsection 312(3) of the Act also provides for certain matters to be prescribed by regulation or set out in a by-law. Knowing what the Province intends to address by regulation will be critical to a determination by HRM of the elements to be addressed in the by-law. As noted elsewhere in this section, it is recommended that HRM include as much detail as possible in a by-law as opposed to provincial regulations in order to provide HRM with the flexibility and control necessary to support the HRM photo enforcement program.

Section 45:

Subsection 45(1) of the Traffic Safety Act provides that:

*The council of a municipality may make by-laws  
(n) respecting the use of electronic enforcement systems;*

Subsection 45(2) provides that:

*A by-law made under subsection (1) may (a) prescribe the fees for any licence provided for in the by-law; (b) establish offences and penalties, not exceeding any limit prescribed by the regulations, for a contravention of the by-law; (j) provide for exemptions from the application of the by-law;*

While this authority is permissive in nature, there is little question that HRM will need to enact a by-law<sup>27</sup> or by-laws under this authority to govern the use of electronic enforcement systems. A review or consideration of the Halifax Charter will also help inform the full content of the by-law. Subsection 45(1) authorizes a by-law respecting the use of electronic enforcement systems; however, there may be other items or aspects beyond the use of electronic enforcement systems that HRM wishes to include in the same by-law. For example, guidelines or guiding principles; length of any or all deployment should HRM wish to invoke a cap as necessary; the structure for the program; title of program lead; internal and external reporting requirements; public accountability measures; evaluations; use of warning letters and so forth.

It should be noted that subsection 311(1) of the Traffic Safety Act creates, at minimum, an expectation, if not a requirement, that the HRM by-law authorizes the use of electronic enforcement systems, including specific platforms (electronic enforcement systems for speed, red light running, and traffic lanes). The additional provisions specific to the use of electronic enforcement systems are listed at the start of this section but are repeated here for convenience. The additional by-law provisions could include:<sup>28</sup>

- ❖ Setting out the objectives for each platform of electronic enforcement being used
- ❖ Setting out the governing principles of site selection (not an exhaustive list) – this could have the added benefit of insulating site selection from local interference
- ❖ Establishing a dedicated road safety fund for HRM net monies, if any, from the use of the electronic enforcement systems
- ❖ Setting out who the law enforcement officers are further to the definition to be established by the province and describing whether they are employees of a government entity or include contracted service providers
- ❖ Setting out the length of use/ whether for pilot/ permanent
- ❖ Setting out a review and review period for each platform including which departments or offices participate and which chairs
- ❖ Setting out that use continues during the review
- ❖ Providing for warning letters if HRM intends to use such letters
- ❖ Setting out public notice if the province does not provide for same regarding site activation

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<sup>27</sup> In this section, the singular is used; however HRM may need to or decide to enact more than one by-law especially given the timing of the various elements of an electronic enforcement system program. A review of draft or final provincial regulations will also inform this matter.

<sup>28</sup> This list is illustrative only.

- ❖ Establishing a commitment to transparency and public access to information/data. This could include guidelines and publishing on various websites public information and statistical information
- ❖ Establishing an ombudsman- like office or complaints office to field site specific or general inquiries or complaints.
- ❖ Setting out provisions specific to HRM fleet, transit and other vehicles. What is HRM’s commitment to compliance? What will HRM do with such municipal vehicle operators?

An additional consideration in relation to the by-law is the treatment of fine revenue. Section 292 of the Traffic Safety Act provides for what is to happen to fine revenue from the use of electronic enforcement systems:

*Where the fine revenue of Her Majesty in right of the Province or a municipality from convictions based on evidence from electronic enforcement systems exceeds the costs of acquiring and using the systems, Her Majesty or the municipality, as the case may be, shall use the surplus fine revenue for the purpose of enhancing road safety.*

As noted elsewhere in this Study, the actual fine component belongs to HRM and the Province retains the victim fine surcharge, currently 15% of the fine, and the court costs, currently \$122.50 for each ticket issued, irrespective of whether the matter is simply paid as an out of court settlement or a trial is held. An electronic enforcement system program should deter behaviour over time and, as a result, operate at a loss or breakeven. It should not be a money-making undertaking but a road safety tool. In the event of surplus fine revenue, HRM has the benefit of statutory direction with regard to the use of such surplus fine revenue. It is recommended that HRM determine whether such surplus monies, if any, can flow through general revenue and be allocated by the budget process or whether a dedicated road safety fund for such monies, if any, should be established. Some examples of use of surplus monies exist in the reports prepared by other jurisdictions.

## 5.5 Summary Proceedings Act

The Summary Proceedings Act is the procedural code in effect in Nova Scotia governing the charging and prosecution of those that are alleged to have committed a provincial or summary offence, including parking infractions. On review, there is nothing in the Act that would preclude the issuance of charges to owners detected through the use of electronic enforcement systems. While no amendments are required to implement a photo enforcement program, changes are recommended with regard to the method of service of tickets. As noted elsewhere in this Study, the method of service of the tickets is dictated in the Summary Proceedings Act and HRM staff need to discuss with the Province both amending the Act to provide for service by regular mail instead of registered mail as well as the prescribing of a ticket specifically to be used for photo enforcement offences.

In addition to the provisions in the Traffic Safety Act, the various regulations and the HRM by-law, it will be necessary for the Province to establish the penalties for owners committing the authorized offences that are detected through the use of an electronic enforcement system. At the time of writing, the Province had released a public consultation on penalties generally in relation to offences under the Traffic Safety Act. Unfortunately the consultation document does not include penalties for authorized offences to be enforced through the use of photo enforcement. As a result, it will need to be determined whether a regime of first, second and subsequent offence penalties should be established for offences authorized to be enforced through the use of electronic enforcement systems. It is recommended that HRM consider the pros and cons of having such a regime in the context of photo enforcement and whether a single penalty for each offence irrespective of the number of times the plate has been captured is preferred. Vehicles detected based on licence plate can rapidly move to a second, third or subsequent offence and the resulting higher penalty could drive up the challenge or trial rate. This in turn could have unintended consequences on both prosecutorial and trial capacities. The public may not be accepting of having a staggered penalty regime given the practical realities of potentially multiple persons driving a vehicle.

Fleets and business with multiple vehicles could be disproportionately impacted by such penalties. If mistakes are made in the ownership information or the person successfully appeals a conviction, the impact on the counting of previous convictions has to be considered. The tracking and recording of the plates to determine the number of offences can have a workload impact. The myriad of details that would need to be sorted through and resolved, including the period of time in which a person can have a second, third or subsequent offence will require considerable effort. In considering this issue, the public reaction including allegations of a cash grab, must be considered.

Of note is section 10 of the Summary Proceedings Act which sets out a regime of mandatory driver licence suspension for certain offences under the current Motor Vehicle Act. The licence suspension applies to certain speeding offences and occurs even if the ticket is paid. There is a similar provision in subsection 310(4) of the Traffic Safety Act, but the mandatory licence suspension only applies if the owner was the driver at the time of the offence. While it is highly unlikely that the identity of the driver could ever be established using photo enforcement, it is recommended that HRM ensure that it be clarified that the mandatory driver licence suspension will not apply to convictions based on evidence obtained from electronic enforcement systems irrespective of who was driving, the applicable speed limit or the rate of speed.

Under the Summary Proceedings Act, the Attorney General and Minister of Justice may make regulations prescribing various requirements including the use of prescribed forms such as the summary offence ticket. As the form of tickets to be used by law enforcement officers are prescribed under the Summary Offence Tickets Regulations, HRM may wish to consult with provincial staff on whether a new or modified Form A ticket that would support the efficient

use of technology when electronic enforcement systems are used could be regulated. This approach has been used in other jurisdictions. A sample of the automated speed enforcement ticket used in Ontario is publicly available for reference.

Halifax Regional Police and the HRM Parking staff currently file electronically created charges (summary offence and parking) through the provincial JEIN system as required by the Summary Offence Proceedings Regulation. Experience with this and other regulated requirements may offer insight in exploring opportunities with provincial staff to improve existing regulated processes related to the completion, signing, filing, issuance and printing of tickets.

## 6.0 Photo Enforcement

### 6.0 Types of Enforcement

Generally speaking, in Canada, there are two offences that are enforced using photo enforcement or automated enforcement systems - failing to stop at a red light and speeding. All photo enforcement systems take images of the rear plate of the vehicle because, in addition to privacy issues, Canadian jurisdictions do not issue charges to vehicle operators or drivers but instead rely on the respective owner liability provisions to charge the registered plate holder. The information that follows is general in nature and is intended to ensure that how the systems work is benchmarked to avoid misunderstandings regarding the evidence that is produced and the circumstances in which the systems operate.

#### 6.0.1 Red Light Camera Systems

In the case of red light running, the system captures the first image as the vehicle approaches the intersection travelling at or above a detectable or threshold speed when the signal indication is red. The second image is captured when the vehicle is in or through the intersection. Right turns on red can be captured by these systems provided that the vehicle is travelling at or above the threshold speed and has not stopped first. The data captured at the time of the incident usually includes the length of the amber indication; the duration that the red signal indication was shown as the vehicle approached the intersection; the duration of the red signal indication, in the second image, as the vehicle continues through the intersection and the speed of the vehicle.

Red light camera systems consist of the camera housing for the camera unit which allows a municipality to install more housings than camera units and to rotate the camera unit accordingly. The system monitors traffic approaching the intersection from one direction. Auxiliary flash units are installed to ensure adequate illumination of the vehicle. Red light camera systems no longer require that loops be installed in the road. The systems are pole mounted with the actual camera system capable of being rotated amongst the housings. The systems can produce video or still images; however, experience has shown that two still images that set out the essential elements of the offence in the images and related data are more than sufficient to prove the commission of the offence. Intersection design and the timing of the signal indications are also important. Several prerequisites must be met before the system captures an image:

- ❖ The signal display must be displaying a red indication for a minimum of 0.1 seconds
- ❖ The vehicle must be approaching the intersection or stop bar before the traffic signal shows a red indication
- ❖ The vehicle must be travelling above the detectable or threshold speed

The systems do not capture images of stopped vehicles or of vehicles that have entered the intersection on a green or amber signal indication and that complete the turn on the red.

### **6.0.2 Speed Camera Systems**

Electronic enforcement systems or automated speed enforcement systems that capture an image of a vehicle travelling in excess of the speed limit can be pole mounted (with a housing that allows the camera system itself to be rotated) or be mobile (which in turn allows for the system to be moved from location to location). The systems are comprised of a combination of a camera and speed measuring equipment. Mobile units are battery powered and are placed near the edge of the roadway. One image is all that is required with the data showing the elements of the offence of speeding including the posted speed limit and the speed of the vehicle as recorded at the time that the image was captured.

The systems only capture images of vehicles travelling above a threshold speed in order to avoid capturing images of all speeding vehicles. The systems can be operated during specific times or 24 hours a day. Unlike older enforcement systems, the use of today's systems does not require vans operated by people. Most systems can 'mark' the vehicle in the image that is speeding – this is usually preferred by prosecutors to address arguments that it wasn't the person who was speeding.

### **6.0.3 Intersection Safety Camera Systems**

There are also systems – referred to in some Canadian jurisdictions as intersection safety cameras - that combine red light running and speed detection. The system captures vehicles that fail to stop at the red light and also captures vehicles proceeding through the intersection irrespective of the signal indication at the time. It is important to keep in mind that speed is detected and shown in the data box of the electronic enforcement systems that only detect red light running for the sole purpose of showing that the vehicle was in motion or had velocity at the time of the incident. It is not used to prove the offence of speeding. With an intersection safety camera system, prosecutors would have to be satisfied regarding the accuracy and testing of the speed measurement component of a so-called intersection safety camera in order to prosecute the resulting speeding charge. Another issue is whether the vehicle owner is charged with one offence or both offences.

A pre-requisite or condition for an offence to be proven and is a critical factor in issuing a charge is that the clarity of the licence plate must allow the reviewing officer to clearly read the information on the licence plate. The clarity of the licence plate in images transcends all photo enforcement platforms and should form part of the proof of performance in the procurement process.

## 6.1 Offence Processing

Photo enforcement involves more than the systems used to capture images and the related data. The so-called 'back end' or processing function is as important as the systems and the two, irrespective of the processing model chosen, must work in tandem. The processing function, in turn, must be supported by access to records for registered plate holders or owners and a charge issuance and filing process that supports volume. Both the Nova Scotia Provincial Court and the prosecution units must have capacity to both receive and process the charges and to prosecute at trial. This section is a summary of the various components of the use of photo enforcement.

### 6.1.1 Image Capture

The electronic enforcement systems capture images of vehicles speeding or that fail to stop at a red light. It is important that prosecutors be involved in the procurement of electronic enforcement systems to ensure that the resulting images will be useable at trial to prove the commission of the offence beyond a reasonable doubt. The image must clearly show the number plate in order to establish the identity of the person charged – the registered plate holder. This has to be clear in the image – there can be no enhancement used to ascertain the number plate.

The systems have to be set up so that images are captured year-round in variable lighting conditions. It is normal with such systems to not be able to capture images correctly in all weather conditions. The image may be clear but snow, for example, covers the lanes and lines at the intersection. In the case of failing to stop at a red light, the image must capture the vehicle approaching the intersection and not over the stop bar or line or in the intersection. The image also has to show the red signal indication facing the vehicle at the time that it failed to stop. Each of the two sequential images has to show consistent or sequential data and content. Prosecutors have to rely on both images taken in the case of failing to stop at a red light. One of the two images can show the vehicle speed at the time of the incident and this is necessary not only to demonstrate that the vehicle was moving at the time but also to show that the vehicle triggered the system to take the images based on the detectable speed.

In order to ensure that each deployment is successful, vendors will have the systems take test shots at the start and end of each deployment. The deployment period usually corresponds to the storage on the USB key and is not reflective of how long the system will be active at that location. With electronically transmitted images, the timing of the before and after test shots may differ.

Site sign off is an important step to be completed prior to the capture of images that will be used to lay charges. It has three key components – image, installation and document review. It also is relevant in relation to the contract with the vendor as site sign off is the trigger to commence the invoicing. It is necessary for all deployments of electronic enforcement systems. If site sign off has not been completed for the site no charges should be laid. The sign off should

be undertaken by HRM staff who will confirm that the site is ready to issue charges; to be designated as an accepted site and to authorize invoicing. It can take more than one attempt to successfully complete the site sign off process.

Images usually have data shown or superimposed at the time that the image was captured. It is critical, for proof of performance, that the data shown or superimposed is consistent with the information shown in the image or images. HRM will need to know what will be prescribed in regulations with regard to the data in order to work with vendors to develop the data bar or content. Most vendors have standard information that is shown or superimposed in the data bar when the image is captured and it is unlikely that there will be a significant difference between the data that vendors provide and the regulations.

The Nova Scotia legislation permits the data associated with the images to be shown on the images or appended to the images. In a jurisdictional scan, no jurisdictions were identified that append the associated data to the images. It is recommended that HRM adhere to the best practice of requiring that the data shown or superimposed on the image or images by the electronic enforcement system be superimposed at the time that the image is captured. All such systems are capable of doing this and it avoids errors that would occur in the matching of images with data. Most importantly, it results in an image which paints the complete picture of the incident or commission of the offence without having to reference additional pages.

It must be kept in mind that not all images will result in charges being laid. This can be due to lighting conditions; blurred or unclear plate numbers or jurisdiction; inconsistent data shown or superimposed on the image; an incorrectly positioned vehicle marker in the case of speed enforcement or improperly entered speed limits. The percentage of images that will not result in charges being laid is approximately 20%.

It is essential that the contract with the vendor clearly delineates what problems the vendor is responsible for, and the consequences of same, and what problems fall under the responsibility of HRM. An example of the later would be if HRM provides the vendor with incorrect speed limit information for the particular site. Images are coded by the officers reviewing them. The codes reflect the various reasons why the image did not result in a charge being laid.

All images taken by the systems should be to the same standard as if all images are to be tendered in evidence at trials. This is one thing that distinguishes the US market from the Canadian market when it comes to photo enforcement vendors. In the former there is no requirement for prosecutors to prove the offence beyond a reasonable doubt. As a result, vendors who are not already operating in Canadian jurisdictions can struggle to understand the requirements in Canadian jurisdictions and the involvement of prosecutors in proof of performance.

Images should be captured on a USB key or on a secure, encrypted Canadian server. Some jurisdictions in Canada use a cloud-based service to transmit the images from the site to the processing centre. The scope of this Study does not include a review of the issues associated with this process; however, HRM should take steps to ensure that none of the images or data are transmitted through the United States and/or stored by the vendor.

Costing should include the need to print copies of images for trial. With regard to providing persons charged with an opportunity to view the images, there are effectively two options.

One is to include digitized images with the ticket followed by printed copies for matters going to trial. The other is to provide a personal identification number that, in conjunction with the ticket number or some other information, will allow the person to access the images online. Some vendors provide support for such access; however, as with the download of images, HRM will need to ensure the security and integrity of any such online access to images related to the offence.

The officers working in the processing centre either upload the images from the USB key or download the images from the cloud. If a USB key is used, continuity of the evidence should be addressed through the use of an evidence tracking log as well as lock boxes for the transfer of the USB keys. The vendor will remove the USB key at site and place it in a lock box which is then delivered to the processing centre. The lock box is received at the processing centre and the images are uploaded for review. A log is completed with the various steps, dates and times indicated. The vendor that provides the electronic enforcement systems is usually the vendor that provides the necessary processing centre equipment so that the images, irrespective of whether a USB key or the cloud is used, can be viewed and charges can be laid.

All electronic enforcement systems capture images when a vehicle is travelling at or above a certain speed. For red light camera or intersection safety camera systems, the detectable speed can be set to capture more or less images. For example, if the detection speed that triggers the capture of images is set too low, a larger number of images depicting the failure to stop at the red light when the vehicle is making a turn will be captured than if the detectable speed is set higher. A reasonable detectable speed must be used to detect vehicles travelling through the intersection – it has to be set high enough to demonstrate that the vehicle didn't simply stop too late. Generally speaking, for these systems the detectable speed is set no less than 25 kph.

With regard to electronic enforcement systems that detect speed, the system is set to capture images of vehicles travelling at or above the so-called threshold speed. The establishment of a threshold speed to be used in a photo enforcement program is complex and requires the input of the police services. Most importantly, the threshold speeds must not be disclosed in order to avoid indirectly establishing secondary speed limits. The purpose of threshold speeds is to:

- ❖ Ensure that the operation of the systems is fair and reasonable
- ❖ Ensure that not every vehicle travelling above the speed limit is captured

- ❖ Replicate police enforcement by only charging those who would otherwise be charged

It is the hours of operation and not threshold speeds that should be used to control the volume of images captured. Threshold speeds developed as a result of collaborative dialogue should not change. Different threshold speeds can be used depending on the speed limit, with lower threshold speeds in lower speed zones and higher thresholds in higher speed zones.

### 6.1.2 Process for Charging

The charging process is one of the most critical components of the photo enforcement program. HRM can have a transparent and fair photo enforcement program but if charges are laid in cases where the images are questionable or unclear all other efforts in establishing public confidence will be rendered meaningless.

Officers responsible for reviewing images and the related data should be trained on the applicable procedural code (Summary Proceedings Act and the regulations) as well as the Traffic Safety Act. The officers must understand not only the essential elements of the offences being enforced but must also thoroughly understand how to issue and serve a ticket. The applicable law regarding owner liability and plate registration should be known to the officers. The officers must be equally confident in forming the belief that an offence has been committed as they are in concluding that no charge should be laid. If the image does not clearly show the number plate or the offence, combined with the data, then no charge should be laid. Officers should not be allowed to enhance images or encouraged to meet a quota of charges.

No charges should be based on questionable images on the assumption, for example, that a trial is unlikely to occur. Charges should be laid on the assumption that a trial will always be held subjecting the images to scrutiny. Prosecutors cannot be put in a position where they are regularly withdrawing such charges because the images are substandard. Even without a reason being given on the record, word will quickly spread and the number of matters going to trial will increase.

Individuals who undertake the image review and charging functions should be given time to learn the operation of the back-end process and to take sample images through the charging process. The vendor will set up the form of the charging document electronically in the system. HRM will determine which components, if any, of the form of ticket are to be populated by the back-end system or by the law enforcement officer who reviewed the image or images.

The back-end or processing systems of most vendors allow for the plate look up information – name and address -to be inserted onto the ticket by the system. Before the ticket is served, it is critical that the ticket be reviewed to ensure that everything matches – the plate to the owner and the image with the data to the charge. Caution must be exercised to ensure that any

processing errors are identified prior to service or, at the latest, prior to filing the charges with the court.

Policies and procedures related to the processing of images and charging must be established before charges start to be laid. These should be established collaboratively with a variety of offices including prosecutions and the police services. Such policies and procedures can be included in the training and applied at the outset of charging. Most of the issues can be readily identified and include, for example, what to do when the image shows:

- ❖ An emergency vehicle (with or without lights flashing)
- ❖ Funeral processions
- ❖ HRM vehicles
- ❖ Transit vehicles
- ❖ Bridge Commission vehicles
- ❖ Excessive speed
- ❖ Out of Province plate

Some images may capture a collision at the intersection involving the vehicle that failed to stop for the red light. The collision may be with a pedestrian as opposed to another vehicle. Not all jurisdictions lay the owner liability charges in these circumstances. Instead, the incident is left to the police service to investigate and to lay charges, if warranted, against the driver of the at fault vehicle. Even if the police are not ultimately involved in the matter, having a policy to not charge in such circumstances can avoid issues that could arise if the owner liability charge was laid. For example, if a pedestrian has been injured as a result of the vehicle failing to stop is it really appropriate to charge the vehicle owner? This is just one of the many issues that will need to be considered.

It is important that HRM policies and procedures support the laying of charges where the image and data supports doing so irrespective of who the registered holder of the plate is. This is part of the overall transparency and fairness of the photo enforcement program. Charges are laid unless the image and data reviewed discloses a reason not to – for example if the emergency lights are clearly deployed at the time the image was captured.

Charges should be laid and the exemption in law, if there is one, claimed after the fact. One of the immediate consequences of the implementation of photo enforcement is the detection of HRM owned vehicles not respecting the rules of the road. As noted elsewhere, HRM will need to develop policies and procedures for reviewing the circumstances of such tickets and dealing with the operator of the vehicle. The ticket is served on the registered owner but often fleet managers pass the ticket along to the operator to deal with. For a variety of reasons, HRM fleet managers will need to have a policy that applies across the board with regard to the tickets and the operators must be held accountable. Without a firm policy of accountability, poor or unacceptable driving practices will continue and HRM will risk public exposure and criticism. In

the case of police service vehicles, for example, the police service can review the circumstances, determine whether the statutory exemption was met at the time and provide the prosecution unit with the supporting evidence.

Another issue that can arise in the charging process relates to the ownership information. First, the law enforcement or issuing officers should determine from the images and related data if an offence has been committed. If it has, the system should be queried to determine the ownership in relation to the number plate. The resulting ownership information, including the number plate, should be compared to the information as determined by the reviewing officer to ensure that everything is consistent. In other words, the number plate queried and for which there is ownership information, matches the number plate and jurisdiction (province/state) shown in the image. Only then should the charge be laid. Second, if the ownership query comes back showing that the plate is unattached, for example, the processing centre staff will need to know what to do – should the number plate be queried again to be certain or should the image be coded out as no ownership registration. These are the two main issues that arise in the normal course of processing; however other issues can arise.

It is also recommended that HRM ensures that there is a HRM manager at the processing centre at all times who can deal with issues that will arise especially in the first few months but also on an ongoing basis. HRM Legal should identify specific legal staff to support the processing centre and the photo enforcement program overall. This will have the added benefit of being informed with regard to issues which will allow for the timely withdrawal of charges or other actions as necessary.

When red light camera or intersection safety systems are being used to detect the offence of failing to stop at a red light, the review of the images and the data shown or superimposed on the images allows the law enforcement officer to form the belief that the offence has been committed. That person sees everything that they need to in the image and associated data, including the fact that the signal head was red and that the vehicle approached the intersection at or above the detectable speed, and proceeds to issue the ticket. For images and related data from electronic enforcement systems being used to enforce the offence of speeding, it is different. The person reviewing the images and the related data needs to ascertain a number of factors before issuing the ticket including:

- ❖ The applicable speed limit for the deployment location
- ❖ The relevant law establishing the speed limit
- ❖ The signage specific to the location, if use is limited to specific zones or areas and/or if warning or advisory signage is required or used
- ❖ That the location is correct – there should be a folder of images of the site
- ❖ That the system recorded the correct speed limit for that site
- ❖ That the marker, if a marker is prescribed, properly marked the vehicle that was speeding

- ❖ That there is a certificate of accuracy or tester certificate for that device dated within whatever period of time is prescribed and that the offence date is within that period of time

The officer also must ensure that the correct penalty for the rate of speed over the speed limit is shown on the ticket.

In relation to both red light running and speeding, the law enforcement officer authorized to review images and lay charges must be satisfied that all provincial legislative and regulatory requirements are fulfilled. The person must know that the electronic enforcement system used to detect the offence was a system prescribed by regulation, either specifically or by characteristics. If signage is required by provincial law or by HRM by-law, the person must be able to view site images that show that the required signage is posted. The electronic enforcement systems, generally speaking, cannot capture any signage so images of warning signs or location signs will need to be available in the processing centre.

### **6.1.3 Access to Owner Information**

Currently, the R.C.M.P. and the Halifax Regional Police issue the majority of summary offence tickets with the assistance of technology. Form A -Summary Offence Ticket as it appears in Schedule 1 of the Table of Schedules to the Regulation- sets out the information to be included when issuing a summary offence ticket whether completed manually or with the assistance of technology.

Both the R.C.M.P. and Halifax Regional Police use an electronic ticket preparation application that exists within their respective information systems network. Upon determining that a provincial offence charge is to be issued, that can include any one of a number of offences including those committed by drivers, the officer is able to obtain the driver licence from the person involved. Using the available technology (on-board computer workstation) the officer can swipe the driver licence barcode and complete a search of the Registrar's database to retrieve details including name, address, licence status, and so forth.

Using the data from the Registrar together with details including the specific offence, date time, place, penalty amounts and so forth, information is entered into the application to populate the fields of the "ticket form". A paper copy is printed and served on the person.

For parking tickets issued by authorized officers, including HRM by-law officers and other authorized persons issuing parking tickets within the municipality, there are two versions of parking infraction tickets included in Schedule 1 of the Table of Schedules to the Regulation. Form B-1 Parking Infraction Ticket for HRM is used where parking tickets are issued with the assistance of technology. Form B is the Parking Infraction Ticket form used where the ticket is manually prepared.

At the point of issuing a parking infraction ticket, HRM does not perform a search for plate ownership against the Registrar's database. The parking infraction ticket is either placed on the vehicle by the issuing officer or in some cases where the operator is present is given to the operator. Each Friday at 5pm HRM Parking transmits from their parking ticket application (AIMS) a list of licence plates related to unpaid parking tickets issued in the preceding seven days to the Registrar of Motor Vehicles requesting plate owner information. Upon return of the owner information, the HRM Parking application is updated with this information for the purpose of sending the prescribed Notice of Parking Infraction- Summons to Appear (Form C of the Schedule) to the registered holder of the licence plate associated with the parking infraction ticket.

Given that certified statements will not be used, the same process could be used for the tickets being issued by the processing centre for offences detected through the use of electronic enforcement systems. The processing centre could query the plates shown in the images with the Registrar's database. It is understood that this actually would be done via JEINs. JEINs would return the ownership information for most if not all of the plates being queried. Only authorized persons can access the JEINs system and HRM will need to ensure that the ownership information is not stored on any vendor system but remains within the control of HRM. It is recommended that HRM and the Registrar's staff review the specific details surrounding the request, provision and appropriate use of plate holder data.

The requirements should be set out in an authorized user agreement pursuant to the requirements outlined in the Traffic Safety Act and the Public Service Act. The agreement should also be reviewed by the appropriate staff responsible for advising on matters relating to information sharing and protection of personal information with a view to ensuring measures are in place within HRM to protect the privacy of personal information.

Most vendor systems populate the pre-set form of ticket with the information pertaining to the offence as well as the plate registrant or vehicle owner. The issuing officer enters some specific information into certain fields and the charging document or ticket is completed and ready to be issued. As previously noted, other jurisdictions have the benefit of using a prescribed ticket form for use to capture information where photo enforcement systems are used by officers to lay charges. The form of charging document for use with automated speed enforcement in Ontario is publicly available.

#### **6.1.4 Service**

The officers authorized to undertake the work in the processing centre (law enforcement officers as defined by regulation) will serve the tickets by registered mail as required by current legislation and complete related information regarding service. Having to serve by registered mail may result in the officers attending at a post office to complete the necessary documentation and steps for registered mail. Subject to volume, a specific day of the week should be chosen for service to be completed.

The costs associated with serving each ticket by registered mail (\$11.00 at time of writing) will have to be incorporated into the budget. The current requirement for registered mail is more stringent than in other jurisdictions where service can be completed by using regular mail. As noted elsewhere in this Study, HRM should pursue an amendment to the Summary Proceedings Act to enable service of the photo enforcement tickets by regular mail. The cost of service by registered mail is significant. In addition, most other jurisdictions allow for service of tickets by regular mail given the very limited consequences of conviction and the fact of owner liability. The change in service to regular mail might require that a new form of ticket be prescribed but it is important that the service issue not be overlooked on the path to implementation.

Because the ownership information is not certified, HRM will need to develop specific policies and procedures for instances when the ticket that was sent by registered mail is returned to sender. The time periods under the Summary Proceedings Act would appear to allow for the ownership to be queried a second time to determine if there is an updated address for service. A benefit of not having the form of the ticket serve the dual purpose of being a certified statement is that there is an opportunity to serve the ticket again. Irrespective of what is decided, it is one of the many policies and procedures that will need to be in place for the processing centre prior to implementation.

In addition to printers and other equipment, there is equipment which allows for the envelope for service to have the ticket inserted with the address for service showing. It is important that any return or court related information for payment not be sacrificed in the fold of the document. Canada Post offers registered mail service that includes the envelopes and, if the method of service remains unchanged, this should be explored. It is recommended that HRM use plain envelopes to serve the tickets.

### **6.1.5 Charge Filing**

The provisions exist under Nova Scotia law for the resulting charges to be filed electronically. Filing electronically can require effort upfront in terms of getting the necessary data in a file that is acceptable to the Provincial Court Administrator however that effort is rewarded in the long term.

The Halifax Regional Police and the R.C.M.P. have experience with completing and filing summary offence charges with the Provincial Court with recent data reflecting that about 50% of all charges are filed electronically. In the first 10 months of 2021, over 12,000 charges were filed electronically. Using mobile workstation technology officers complete the necessary charging documents and upon issuance the information is filed with the court via JEIN effectively in real time. The Provincial Court is able to process payments and accept various documents related to each charge electronically filed without the need for hard copy documentation to be provided.

The data and certification requirements are outlined in section 8B the Summary Proceedings Act and provide the authority for certifying and signing by electronic means the current prescribed forms used for summary offences. The Summary Offence Tickets Regulations, made under Sections 8, 8A and 8B of the Summary Proceedings Act, provide detailed requirements to be met for the proper electronic completion and processing of summary offence tickets. Where the requirements respecting completion and signing of a summary offence ticket by electronic means are met, the regulation requires that the depositing of the ticket information (filing with the Provincial Court) comply with the sections of the regulation as follows:

#### Section 11C

- (1) *A summary offence ticket that is completed and signed electronically in accordance with Sections 11A and 11B may be deposited under subsection 8(12) of the Act if all of the following conditions are met:*
  - (a) *the data is transmitted without alteration to JEIN;*
  - (b) *the data is received in its entirety by JEIN;*
  - (c) *JEIN transmits an acknowledgment of receipt to the originating computer system confirming receipt of intelligible data.*
- (2) *Once the data for a summary offence ticket is received by JEIN, the systems manager of JEIN must ensure that the data remains complete and unaltered.*

The regulations provide the following interpretation for JEIN.

*“JEIN” means the Justice Enterprise Information Network or any successor information system in use by the Court Services Division of the Department of Justice for processing summary offence tickets.*

The completion and filing requirements shown below for parking infraction tickets differ slightly from that required for summary offence tickets and attention should be paid to the differences in establishing the so-called back-end process including filing with the Provincial Court.

Other provisions are also relevant.

#### Section 14:

*If a parking-infraction ticket or certification that is in an electronic format is completed and signed electronically, the ticket or certification must be completed and signed in an electronic format that is compatible with the Justice Oriented Information System (JOIS) or the Justice Enterprise Information Network (JEIN) or any successor system in use by the Department of Justice, Court Services.*

Section 17:

*(1) A parking-infraction ticket or certificate of service may be filed with the Provincial Court by electronic transmission or by filing a copy of the ticket or certificate on an electronic capture device such as a compact disc.*

*(2) A parking-infraction ticket or certificate of service printed from an electronic image constitutes an original as if filing in that form.*

Electronic enforcement systems will, in the processing centre, generate tickets electronically and must follow the completion and filing requirements in place for summary offence notices. Specific requirements will be known once new regulations, if any, identify how summary offences other than parking that relate to owner liability are to be processed. In many jurisdictions, a new form of ticket is prescribed for use with electronic enforcement systems. The specific form provides for additional information to be included on the ticket.

This information is typically related to the technology used to capture information about the offence and is not data that is recorded within the court database. Information about the owner along with details including offence, penalty, dates, times and so forth are already existing data fields within an offence entry database. It will be necessary for HRM staff to work with the Provincial Court Administrator to add to the existing table of offences, within the court application, details of the new owner liability offences, including the statutory reference and associated penalties. Changes of this type are generally quick updates and are activities likely performed by system administrators on a frequent basis.

The owner liability offences to be enforced using electronic enforcement systems do not attract demerit points or the suspension of a driver licence on conviction. Ensuring charges laid where an electronic enforcement system is in use will necessitate creating a clear process between JEIN and the RMV database that will ensure these charges are not subject to demerit points or suspension of driver's licence. Charges filed as a result of using electronic enforcement systems that fall into default and are subsequently forwarded by the Provincial Court using JEIN to the Registrar of Motor Vehicles will only attract the imposition of the "plate denial" sanction in the same way as defaulted parking fines are handled.

There may be an ability to flag these items in the RMV system or alternatively a specific offence could be created for use where charges are issued under an electronic enforcement system, either added to the existing list of offences or by way of by-law. In some jurisdictions a unique series of ticket numbers, with a specific identifier, are assigned to processing centres in order to ensure that the matters are readily identifiable as owner liability tickets involving photo enforcement. In particular, this also ensures that the conviction information when transmitted to the Registrar, does not inadvertently result in any additional consequence of conviction. HRM staff will need to work closely and collaboratively with the Provincial Court Administrator to ensure that tickets can not only be filed electronically, but that the file and other information is in a correct format and that the matters can be distinguished from non owner liability

offences. Although the imposition of demerit points or remedial programs do not apply to these charges as the only legislated penalty is the fine, court costs and victim fine surcharge, it is understood that convictions are entered onto the driver record due to efforts by the insurance industry to have all convictions whether related to driving or not included in the driver record. HRM and the RMV may want to consider the appropriateness or necessity of this approach.

### **6.1.6 Court Capacity**

All persons receiving a summary offence ticket can exercise their right to plead not guilty and require the prosecution to prove the charge beyond a reasonable doubt in court. Each ticket includes information on how a person can seek a date in court to either enter a plea of guilty with submissions as to penalty at a court hearing or to have a trial presided over by a judge or justice of the peace. In summary, an individual must complete and file with the provincial court office a Notice of Intention to Appear at Court (NIA) which is a regulated form. This action must be taken before the date that appears on the ticket.

Persons who elect to appear at court will receive notice of their court date from the provincial court office by either email, fax, or mail as indicated on the filed NIA form as the preferred method by the person filing the NIA. Charges where payment of the amount shown on the ticket have not been received prior to the date displayed on their ticket are reviewed in court normally by a justice of the peace and a conviction entered.

It is understood from interviews held that approximately 5% of all persons charged with summary offences proceed to trial. Summary offence trials are currently limited to two courtrooms, with a maximum of 6 trials each, operating each evening Monday thru Thursday. COVID has impacted the time to trial which has increased from about 8 months to closer to 10 months even though the charge volumes are about one-half of pre-COVID levels. There are no plans, at time of writing, to increase capacity or the number of court locations to schedule additional trials. As a result, it is imperative that HRM work with Provincial Court officials as part of the planning process to ascertain the volume of activity that could result from the introduction of a photo enforcement program and determine what action, if any, may be required to support the timely hearings of trials.

There are strategies for limiting the impact of photo enforcement charges on courts. One is to adjust the hours during which the electronic enforcement systems are deployed. If initial implementation determines that there are a larger than anticipated number of charges being laid and that more persons than expected are proceeding to trial, a simple short-term solution is to restrict the hours of operation of photo enforcement cameras at one or more sites. While this solution is not ideal, the impact is relatively quick. With regard to systems detecting the offence of speeding, the system can continue to capture speeds, but not images, and can also capture images at a higher threshold. In this way the electronic enforcement system captures images of high-end speeders and charges are laid.

Having a transparent and fair program of photo enforcement will also help with the impact of the program on court capacity. Signage warning drivers that the photo enforcement system is ahead is critical as are other elements mentioned in the section on program components. People receiving tickets who perceive that the system is fair are more likely to pay the ticket. Having certain information such as the certificates of accuracy or tester certificates and a map of sites available on a publicly accessible web site will also help. Consideration should be given to including digitized images with the ticket or having web enabled access to images for persons charged.

Ultimately there are three longer term solutions that can relieve any pressure on court capacity. One would be to seek amendments to allow for the use of certificate evidence when electronic enforcement systems are used. This would allow the officer viewing the images and obtaining the ownership information to complete a certified statement with regard to the owner and the offence (based on the data shown or superimposed on the image and the image). Officers would not be required to testify unless the person charged successfully applies to the presiding justice for a summons because the officer's attendance at trial is necessary for the person charged to have a fair trial. The images would also be certified by the officer as having been obtained through the use of an electronic enforcement system. As with any certificate evidence or certified statements, it would be admissible in the absence of evidence to the contrary, of the facts stated therein. The certified evidence would be completed with the certified proof of ownership. Eliminating the necessity of the officer testifying at each trial will save court time while at the same time maintaining the person's right to a fair trial. This approach also defeats the possibility of having the charge withdrawn where, for any number of reasons, the issuing officer cannot appear at court. The second solution is to build increased capacity through additional court locations. Through interviews it was noted that the night court program was formerly available at the provincial court in Dartmouth. There are no current plans to re-open this program. The option of reopening a facility rather than identifying new space would be, obviously, preferred. The third solution is more challenging – to move these owner liability offences to a system of administrative monetary penalties. Penalty notices would be issued in lieu of tickets and the matters would not fall within the jurisdiction of the Provincial Court. In some jurisdictions, such as Ontario, that change is underway with an expected effective date of July 1, 2022.

### **6.1.7 Prosecutions**

Prosecutors, as noted, must be involved at the outset of the development of a photo enforcement program due to their critical role in the program. Images must be usable at trial otherwise there is no point in having images. As a result, prosecutors must be able to perform a review of sample images from potential vendors responding to an RFP before a vendor is chosen. HRM should recognize that this may result in delay or in no successful vendor being chosen. A photo enforcement program cannot be sustained if there is no reasonable prospect of conviction for charges proceeding to trial. In each specific case there may be a specific issue

that precludes a reasonable prospect of conviction but systemically all charges should result in prosecution as opposed to being withdrawn. Otherwise, public confidence in the use of photo enforcement and the program is lost and the number of matters proceeding to trial will spike. The specific and general deterrent effect of photo enforcement will be lost.

HRM Legal must be resourced to enable prosecutors to adequately prepare to prosecute these charges. If night courts are staffed by per diem prosecutors, these individuals should be compensated to attend an education session in addition to touring the processing centre and seeing sample or actual images. It is critical that prosecutors be given the opportunity to become fully informed with regard to not only the legislative and regulatory regime but how the images are reviewed by the officers, including the data shown or superimposed. Prosecutors should be made aware of the publicly accessible web sites and, ideally, should be able to ascertain whether a person charged has accessed the images if those images are accessible online.

HRM Legal staff may also wish to explore the potential of having judges and justices of the peace participate in an educational session where they can see first hand how the photo enforcement system works.

Prosecutors should also be aware of the policies and procedures of the processing centre in relation to, for example, charging emergency vehicles. Photo enforcement systems capture images irrespective of the category of vehicle in the image. Lights on emergency vehicles, for example, may not be shown in the image. Unless it is clear from the image that the vehicle met the definition of an emergency vehicle at the time the image was captured, a charge will be laid. HRM will need clear policies and procedures for the claiming of any statutory exemptions in order for the charges to be withdrawn.

Finally, prosecutors in conjunction with the local police services can best determine what should be done in relation to excessive speeds. While the owners cannot be charged with stunt driving as that is an offence for which the driver is liable, some jurisdictions issue tickets while others summons the owner to court to answer to the charge. There will be instances where the speed of the vehicle is excessive and having a policy before the systems are implemented is necessary.

### **6.1.8 Fines**

When completing the tickets, the issuing officer must correctly include the out of court settlement amount payable by the person named on the ticket. This amount includes the fine for the offence plus \$122.50 court costs (current amount) and an amount equal to 15% (currently prescribed percentage) of the fine amount representing the Victim Fine Surcharge.<sup>29</sup>

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<sup>29</sup> The Victim Fine Surcharge Rate Regulations.

The victim fine surcharge together with the court costs are retained by the Province with the balance remitted to HRM.

Currently individuals receive a period of about 70 days to decide to submit a plea of guilty together with payment of the out of court settlement amount shown on the ticket. The officer includes on the ticket a specific date where the fine must be paid. This date is generally anywhere from 60-70 days from the date of offence. Payments must be received by the court office no later than the day before the date shown on the ticket. Most vendor back-end systems enable this information to be automatically populated onto the ticket; however, it is still important that the issuing officer verify that this has been done correctly.

The Province will establish the penalties for the authorized offences. Either the form of the ticket or an insert must ensure that persons charged understand that the only penalty on conviction is the fine. No demerit points or licence suspension would occur. If this is unclear or not well understood by recipients, persons receiving tickets may elect to go on the path to trial simply out of concern regarding the consequences of conviction. This point should be made abundantly clear as part of the public communication package. Of note, any interest by the insurance industry and impact on insurance premiums is beyond the scope of the Study; however, the impact of having owner liability convictions on a corresponding driver record should be reviewed.

Parking fines that fall into default due to non-payment are registered against the plate holder file with the RMV and must be paid before a renewal or purchase of the vehicle plate can be completed. The same enforcement sanction (plate denial) would apply for un-paid photo enforcement tickets. The linkage between JEIN and the RMV systems as discussed earlier would need to be in place to support this requirement. In addition to requiring payment of the fine, the RMV also collects and retains a privilege reinstatement fee for unpaid fines that is currently \$39.90.

### **6.1.9 Data Storage and Retention**

HRM policies and procedures regarding data storage and retention would apply to data and documents in the processing centre. If an authorized user agreement is executed, there would be distinct requirements regarding data security in that agreement which HRM must comply with. In addition, the prosecution may have retention requirements that exceed the general retention period especially, for example, in the case of re-openings or appeals.

## **6.2 Site Selection**

While site selection requires elements of the four critical pillars of successful photo enforcement programs, this section focuses mainly on data-based deployment as that is critical to program sustainability. This section assumes that HRM will be able to select sites anywhere within HRM and not restricted by provincial requirements to only deploy photo enforcement in school zones or other specific locations. The emphasis is on speed enforcement; however some

information regarding the use of photo enforcement to detect red light running is included. The types of data required to inform all forms of photo enforcement deployment have been outlined in other sections of this Study. This section provides more detail as to the ways in which those data sets are used to determine site selection and suitability.

Irrespective of whether it is red light camera systems or automated speed enforcement systems being deployed, HRM staff will need to ensure that all mitigation measures that could or should be undertaken at the location has, in fact, been done prior to the inclusion of the site. With red light running it includes the signal timing as well as the optimization of the road design or geometry and lanes at the signalized intersection under consideration. In relation to speed, it is important to reflect on whether the speed limit for the location of the proposed deployment is appropriate and whether, for example, other tools or physical measures should be considered first. Photo enforcement is most effectively used at sites or locations where everything has been considered and implemented, as appropriate, including road design or geometry before the systems are deployed.

Historically, police have focussed their enforcement efforts in areas where there is a low level of compliance, often communicated through complaints from community members or members of Council. While these are certainly factors in the deployment of photo enforcement, deployments should also be driven by data which demonstrates low compliance rates and the associated risks to public safety including vulnerable road users. Site selection cannot be solely opinion or politically driven and only data will result in the effective use of the photo enforcement systems in the longer term.

Community input and communication is an important part of public safety insofar as police and traffic engineering staff are not on every street on every day of the year. While there are advantages of having many 'eyes and ears' in the community, sometimes the perception of non-compliance does not match actual compliance levels. Police receive many complaints related to compliance, but subsequent collections of data do not validate the concerns. This is where the added value of data collection and analysis comes in.

To ensure that site selection is both data driven and responsive to community concerns, it is recommended that a process similar to the one outlined below is implemented. Once the site selection factors are considered, HRM would have the option to either choose the top ranking sites throughout the HRM, or alternatively, allocate (based on data) a camera location to the highest ranking site(s) in each district. Consideration should be given to developing a scoring or weighting system for site selection to facilitate the identification of potential sites and to allow the public to see how sites for deployment are identified.

It should be noted that HRM may, for speed enforcement, have more potential sites pass the secondary stage than equipment or systems. The rotation of the photo enforcement systems through multiple sites is a common occurrence in jurisdictions where mobile equipment is

chosen; however care should be taken in determining the optimal rotation schedule and in ensuring that the evaluation is not indirectly impacted. For example, a rotation schedule of 90 days per site would allow for a period of deployment and post deployment data collection that should support evaluation. While many consider or view the impact of photo enforcement to be immediate, deployment for a sustained or minimum period of time at each site would better support statistical evaluation of the impact. The additional benefit will be a more sustained period of specific and general deterrence.

### 6.2.1 Speed Enforcement

#### Initial Stage of Site Selection:

HRM Transportation Staff develop an initial list of potential sites, considering:

- Analysis of collision data, with an emphasis on collisions involving fatalities and serious personal injury
- 24-hour traffic volume
- Vehicle speed data, by time of day, day of week and direction of travel, to determine areas and times where speed compliance is demonstrated to be low and therefore creates a public safety risk. The speed data collection should be in 5kph increments.
- Requests from Halifax Regional Police, the Royal Canadian Mounted Police, HRM road safety partners, community agencies and the general public.
- Areas with specific safety concerns or risk factors or requiring distinct or special analysis.

#### Secondary Stage of Site Selection:

HRM Transportation Staff undertake visits to potential sites to:

- Determine whether the site is one that can fulfill any anticipated regulatory requirements such as signage.
- Ensure that there are no impediments to the equipment's ability to detect and photograph vehicles. This could include parked vehicles, trees and other objects.
- Ensure that there is suitable space on the roadside to place the equipment, if it is to be situated on the ground.
- Ensure that the site complies with the manufacturer's requirements for placement, such as curves in road, extreme grading and so forth.
- Ensure that the roadway is not currently, or soon to be, under construction.
- Ensure that the roadway has not been identified for a speed limit change near or around potential deployment.
- Determine that the site is not within or close to a speed transition zone
- Ascertain any other condition, including, for example, the placement or inclusion of unrelated signage, such as a '40 km/h Speed Limit When Flashing' signage, which could potentially contradict or otherwise cause issues including at trial
- Ensure that the speed limit for the site is posted and set out in a by-law (duly authorized).

## 6.2.2 Red Light Camera

### Initial Stage of Site Selection:

HRM transportation staff should develop an initial list of potential sites, considering

- An analysis of signalized intersection collision data, with an emphasis right angle collisions and collisions involving fatalities and serious personal injury
- An analysis of pedestrian and vehicle interactions at signalized intersections with an emphasis on right turn on red interactions, fatalities and serious personal injuries.
- Requests from Halifax Regional Police, the Royal Canadian Mounted Police, HRM road safety partners, community agencies and the general public.
- Review of charges received and convictions for failing to stop at a red light in the previous five years.
- Road design or geometry and signal timings to ensure that these are optimized at each potential site.
- Traffic volumes

### Secondary Stage of Site Selection:

Once potential sites have been prioritized, HRM transportation staff should perform site visits to:

- Determine whether the site is one that can fulfill any anticipated regulatory requirements such as signage.
- Ensure that there are no impediments to equipment's ability to detect and photograph vehicles. These could include parked vehicles, trees and other objects.
- Determine that there is suitable space on the roadside to place the equipment, if situated on the ground. Alternatively that there is adequate boulevard space to accommodate the equipment.
- That the site complies with the manufacturer's requirements for placement, such as curves in the road or extreme grading.  
Ensure that the roadway is not currently, or soon to be, under construction.
- Determine the impact, if any, of installation of the equipment on traffic flow.
- Undertake actual traffic counts of vehicles that fail to stop at the red signal indication (measured in relation to the essential elements of the offence) both on the straight ahead as well as right turn on red.

## 6.3 Evaluation

Site selection and program evaluation are interconnected because 'before' data is critical to the determination of a photo enforcement program's feasibility as well as the selection of specific sites. Further, if sites are not properly selected there can be a negative impact on the specific and

overall program evaluation. As a result comprehensive and careful data driven site selection is an important component of a photo enforcement program.

Irrespective of the method of deployment, the evaluation of a photo enforcement program centres around the key question of whether the deployment reduced both incidents of the offence (speeding, red light running) and the consequences of the conduct, such as right angle or other collisions and injuries. Provided that the photo enforcement program is data driven and built on the pillars for success identified in this Study, the evaluation should result in affirmative responses across all categories. Additionally the evaluation may disclose a positive impact on nearby roadways and intersections, often referred to as the halo effect, as well as overall within the municipality.

Generally speaking, evaluations of red light camera and automated speed enforcement programs are positive, although varying in degrees of reductions achieved, and thus support the continued use of such systems. The evaluation of the before and after data for speed enforcement should include the baseline data; the change in compliance; the change in 85th percentile speeds and change in average speeds. Speeds will be compared to the before data, during and post deployment. Compliance over time, as well as trends in speeds during the deployment, should be ascertainable through before and after speed studies and during deployment through the use of the system which can gather data even when not capturing images for enforcement.

Today, evaluation plans for photo enforcement include more than the before and after data. While the more immediate emphasis and demand for information will focus on the number of offences detected and the range of speeds, other elements are important and should be included in the evaluation plan. These elements reflect the program pillars including fairness and transparency set out in this Study. The plan should address questions such as:

- Was the HRM program operated in compliance with the guidelines?
- Was the HRM program data driven, including site selection?
- Were threshold speeds reasonable and consistent with police enforcement?
- Were there issues disclosed through prosecutions or public complaints? Did the photo enforcement program raise public awareness about the need to slow down and obey posted speed limits/ intersection signal indications?
- Is the use of photo enforcement and the program itself consistent with HRM's Road Safety Plan, including engineering measures and education initiatives?
- Does the use of photo enforcement compliment traditional police enforcement within HRM?
- Does the motoring public understand the safety benefit of penalizing those who disobey traffic laws and endanger other drivers and pedestrians?

The approach to and authorship of the evaluation is also important. There has been a move away from government generated reports towards third party reports. This migration has occurred for a number of reasons but include the objective, impartial lens applied to the evaluation by third parties and the experience of third parties in assessing program delivery. As

noted in the Study, some Canadian jurisdictions have undergone program evaluations or reviews and these can help better inform the work of HRM staff in this regard. Examples of these studies include the 2011 Traffic Injury Research Foundation's evaluation of the Winnipeg Police Service's Traffic Safety Unit's photo enforcement program and, more recently, the City of Toronto engaged the Hospital for Sick Children to undertake an evaluation of the City's automated speed enforcement program. While HRM will be responsible for the collection of before and after data, as well as statistics in relation to the processing centre, HRM should consider the capacity and expertise of HRM staff, within Transportation or other HRM departments, to undertake the evaluation as well as the various pros and cons associated with internalized versus third party evaluations.

## 7.0 Photo Enforcement Programs – Essential Components for Success

### Overview:

Irrespective of the specific offences to be detected or the systems used, a photo enforcement program consists of a number of components. On the practical level, the images captured by the system need to be reviewed by law enforcement officers, such as special constables, in the processing centre, which is commonly referred to as the ‘back-end’. Based on the image review, the registered owner information for the licence plate shown in the image must be obtained as it is this information which identifies the person to be charged with the offence. The related ticketing forms or documents are completed; served on the person charged and filed with the court office. The use of specific forms, how they are served and filed with the court office are usually prescribed in regulations and differ between jurisdictions. An important function of the management of the processing centre is to monitor and follow up with regard to the contractual performance of the chosen vendor. Not all images will be useable images that result in charges being laid and the contract will provide for matters that are the fault or responsibility of the vendor and damages related to certain failings. Another important function in the management of the processing centre is that of information - receiving and responding to all requests, including media requests, for data and information relating to almost every aspect of the operation and deployment of the systems.

A photo enforcement program also must also consist of guidelines and principles for the use of photo enforcement systems. This would include adherence to any provincial, HRM or other guidelines. The program must have integrity and ensure the transparency and communications necessary for public support. Site selection criteria should be publicly available and adhered to. Web sites should be utilized to enable public access to system deployments, including specific locations, and related information. It is important that it be recognized that the program is about more than simply issuing tickets – components must include privacy, data security, communications and evaluation.

The various components listed below are, for the most part, essential features or components for a successful photo enforcement program. If HRM staff do not incorporate these ingredients for success, and do so in a meaningful way, a photo enforcement program in HRM will not be successful and it will be challenging, at best, to have longevity.

### 7.1 Privacy Impact Assessment

A Privacy Impact Assessment (PIA) will need to be prepared by HRM to support the HRM photo enforcement program. The number plate is generally considered personal information and the HRM program must ensure that the information is secure, protected, not stored outside of HRM and not used except for the necessary purpose of identifying the plate registrant in order to lay the charge and serve the ticket. The Privacy Impact Assessment will identify any privacy risks associated with the collection, disclosure, use, retention, and destruction of the personal

information of the vehicle owners as identified through the number plate. The PIA is intended to address privacy concerns and measures with regard to, for example, the collection of personal information using electronic enforcement systems; the transmittal of the information and the hosting of the information on the HRM server. While some parts of the PIA can be completed towards implementation, the completion of the PIA will require a mapping of the entire process from start to finish.

## **7.2 Steering Committee Model**

Irrespective of whether the HRM photo enforcement program consists of enforcing red light running or speeding or both, attention must be given to the governance, development and implementation of the program. It is recommended that HRM establish 'ownership' of the program and that the HRM department that 'owns' the program, most likely Transportation, chairs a steering committee comprised of representatives from the various offices or departments that are directly or indirectly involved in the program delivery including the two police services. This will allow for the various departments to have input, as appropriate, into the multitude of decisions that will need to be made in both the developmental and implementation phases.

Having police, prosecutors, the program manager, communications and others at the table while discussing the program will ensure a cohesive approach to developing a sustainable program of photo enforcement. Consideration should also be given to having a representative of the Provincial Court participate on either the HRM steering committee or a joint provincial/municipal working group.

## **7.3 Commitment to Program Transparency & Fairness**

As can be seen from the jurisdictional scan regarding program reviews and guidelines elsewhere in this Study, photo enforcement programs that lack a true commitment to transparency and fairness ultimately are not sustainable. The public must understand why electronic enforcement systems are being used generally as well as specifically by location. It must also be known where the systems will be deployed as well as specifically when deployment or activation occurs at each site. Measures must be taken, as noted elsewhere, to ensure that the public is aware of the speed limit in effect at each specific location. The public need to know where to direct any concerns of a general nature regarding deployments and overall use of photo enforcement as well as case specific concerns when a ticket is received by the vehicle owner. Often this information can be addressed through the use of a web site or as noted elsewhere. With the exception of threshold speeds, virtually all information about the program including certificates of accuracy or tester certificates should be made available by HRM.

Transparency and fairness must be incorporated and reflected throughout the program design and implementation. It applies, for example, to the charging policies and procedures in effect in the processing centre. A program is unlikely to be seen as fair or transparent if, for example,

HRM fleet vehicles are exempt from being charged. Another potential problem would be for the public to be unable to have their specific concerns received and/or addressed. If the public is frustrated in accessing information and support, then the public will believe that HRM is not operating a fair program.

One of the biggest issues in relation to program fairness and transparency relates to the establishment of threshold speeds. As noted elsewhere, if the thresholds for speed enforcement systems are not seen as fair the entire photo enforcement program will suffer. This was the issue that brought down Ontario's use of photo radar in the mid-1990's. The threshold for detecting and thus charging vehicles exceeding the speed limit was set inordinately low as compared to the 100 kph speed limit that was being enforced. People vocally objected to receiving tickets based on speeds that police officers would not and effectively could not enforce on the highways. Threshold speeds, as noted elsewhere, must be fair and reasonable in the circumstances of the location and speed limit being enforced. In relation to speed enforcement, there is one final consideration. Sites for speed enforcement should not include so-called transition zones – zones where the posted speed limit changes from a higher rate of speed to a lower one. This was occurring in Alberta and the public found it to be unacceptable. It is canvassed in the Alberta Report and resulting Guidelines discussed earlier in this Study.

## 7.4 Signage

The provincial government may, in regulations, dictate mandatory signage for use with both red light camera systems and speed enforcement systems. Signage is considered essential to fulfilling transparency which in turn promotes public acceptance and support. Generally speaking, in Canada, the use of photo enforcement has evolved from programs where the details including locations were carefully guarded secrets to being transparent and open programs where knowledge sharing and public access to program specific information is a primary consideration.

Even if signs are not made mandatory, HRM must embrace signage that indicates where photo enforcement is being used. This can include more general signage at entry points into HRM that photo enforcement is in use within HRM as well as signage approaching or at the intersections where red light cameras or intersection safety cameras are in use. As for speed enforcement, signage is most effective on the approach to the site due to the fact that by the time the sign at the site is seen the vehicle has already been captured by the system. Signs advising drivers that the photo enforcement systems, especially for speed, are “coming soon” can also be used so that drivers are aware of the enforcement to come. HRM should also review signage with regard to applicable speed limits at the proposed sites to ensure that the speed limit is in fact “posted” irrespective of whether the speed limit would usually be posted. Such signage addresses complaints and so-called defences based on “not knowing” what the applicable speed limit was.

## 7.5 Guidelines

Guidelines issued by the Province can have the same effect, in practice, as legislation. Such guidelines can use mandatory language such as ‘shall’ and thus create requirements that must be complied with as if those requirements were, in fact, set out in law. Generally speaking, provincial guidelines are intended to support municipalities in the use of photo enforcement systems. Some of the analysis above as well as portions of this Study will be impacted by whether the Nova Scotia government intends to issue guidelines for the use of electronic enforcement systems. If the Province intends to have guidelines, those should be released as soon as possible to ensure that the HRM program design and development is consistent with and reflects the guidelines. It would be helpful to know what, if anything, the Province would include in any provincial guidelines as such guidelines could include requirements or standards not seen elsewhere. While this is unlikely, it is recommended that HRM canvass the matter with provincial authorities as soon as possible or early on in the process.

It is recommended that even if the Province issues guidelines for HRM to comply with that HRM develop HRM program specific guidelines. As noted elsewhere, it is recommended that HRM adopt the recommendations elsewhere in this Study to have HRM guidelines for the HRM photo enforcement program. HRM guidelines will, effectively, reassure the Province, road safety partners and the public and further insulate the HRM photo enforcement program development from changes necessitated by any provincial guidelines that might be issued late in the process or even after implementation.

Guidelines, whether issued by the Province or by HRM, can help frame the program development and implementation and can include such items as:

- ❖ A commitment to and the plan for evaluation
- ❖ Whether or not there will be a program review undertaken and which level of government will do the review
- ❖ What signage to expect
- ❖ The education plan including public education and communications
- ❖ Site selection criteria
- ❖ That only approved or prescribed photo enforcement systems are used
- ❖ What happens to any surplus revenue
- ❖ Where to direct both general and specific complaints or inquiries

This feasibility Study canvasses guidelines in place in other Canadian jurisdictions to support HRM in the development of its own guidelines and to ensure that the HRM program design is consistent with applicable guidelines or best practices elsewhere within Canada. HRM guidelines can effectively duplicate provincial guidelines, if any. The HRM guidelines should reflect a commitment to transparency and fairness in the photo enforcement design and operation. Both the revised Alberta Guidelines as well as the Ontario Provincial Guidelines for

Automated Speed Enforcement are publicly available documents. HRM staff can review and select the specific components most suited for HRM.

## 7.6 Publicly Accessible Web Site

Creating and supporting a web site or page on the HRM web site is an essential component of the communications plan and, as a result, the HRM photo enforcement program should be prepared to regularly update content on this web site. The page can include content such as frequently asked questions and answers and road safety messaging. Excellent material is accessible on the Ontario Traffic Council web site that HRM may find of interest when reviewing this topic further.

Messages of support from various road safety community partners or resident associations can also be featured. The web site can also host information about where the sites are located. The deployment sites and how the sites are determined, or site selection criteria, should be also be posted. After implementation, data regarding each site, including improvements achieved, can also be posted and updated on a regular basis.

The web site should also be used to host the certificates of accuracy or tester certificates for each site where photo enforcement is used to detect speeding vehicles. That will allow both the general public and persons charged to access the certificates to not only see that HRM is complying with the provincial requirement but to effectively obtain disclosure of the certificate if they are considering proceeding to trial. By enabling public access to the certificates, people can see that there is compliance and may opt not to go to trial.

## 7.7 Program Evaluation

One of the key components of a sustainable photo enforcement program is evaluation.

As canvassed in Section 6.3 of the Study, the evaluation of the HRM photo enforcement program should demonstrate the commitment of HRM to the use of photo enforcement as a road safety tool and not as a revenue generator as critics will allege. It will also allow staff to determine the validity of the site selection criteria and make adjustments as necessary.

## 7.8 Warning Letters<sup>30</sup>

One of the issues that will undoubtedly arise is whether HRM should use warning letters before starting to charge either at specific sites or overall. In some jurisdictions, warning letters have preceded the laying of charges when the use of automated enforcement begins. In one example, Ontario, the Automated Speed Enforcement System Program Provincial Guidelines recommend that:

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<sup>30</sup> This matter will also impact the processing centre; however, most vendors can adapt to the issuance of such letters as required.

*“Municipalities should establish a 90-day warning period in advance of an ASE system activation and each new municipal ASE camera deployment to educate the public and raise awareness of the upcoming implementation. This warning period should include:*

- ❖ *Signage where ASE system is deployed*
- ❖ *Issuing warning letters to drivers who exceed the speed limit in prospective zones”*

Participating municipalities in Ontario use “coming soon” signage to alert motorists in advance to the deployment of the automated enforcement system; however, the issuance of warning letters has seen limited take up despite the Guidelines. Warning letters were not embraced for various reasons, including the fact that warning letters were not used when red light camera systems were implemented in 2000 or even during the short-lived experience with photo radar in the mid-1990’s.

It is not known, at time of writing, whether the Nova Scotia government will require that warning letters be issued before HRM can lay charges or whether HRM will determine whether warning letters will be used. It is also possible that there could be public demand for warning letters. Pressure could mount to use warning letters if a gap develops between the installation of systems and the ability or capacity to lay charges.

There are a number of factors that should be considered should HRM be able to make the determination about the use of warning letters irrespective of why the subject has arisen. While such letters are a well - intentioned idea to address bringing to the vehicle owner's attention that the vehicle was travelling in excess of the posted speed limit, the owners are more than aware of that in the majority of instances. This is especially so when warning signs are installed at sites. Unless actually charged, the behaviour continues. In addition, the police do not warn motorists of their intention to enforce the rules of the road including speeding. If one accepts that the photo enforcement system is effectively standing in the shoes of a police officer there is no basis on which vehicle owners should receive a warning letter instead of a ticket.

Signage may be required by provincial law or guidelines or the HRM by-law and that signage may include signs warning motorists that the photo enforcement system is coming soon or is ahead. Whether the signs indicate that it is coming soon or that it is ahead on the roadway, the signs dilute the argument in support of warning letters. It is arguable that having the photo enforcement system installed is more likely to deter the conduct until charges can be laid than a letter will. A good communication strategy is sufficient warning.

There are numerous considerations and issues associated with warning letters. First is the fact that resolving the issue of warning letters, including the content of same, is a potentially time-consuming exercise that will distract from implementation or start up activities. The wording of any such letters is tricky and associated with various risks. For example, if the letter states or implies that an offence has been committed then it begs the question as to what HRM is doing

about it and the evidence giving rise to that assertion. If HRM has evidence of an offence being committed the public and others may expect HRM to action that through an enforcement mechanism. The letters will require a corresponding process for image review, determination of the plate registration, the production and sending of the letters. Some people will respond to the letters and any resulting media coverage or negativity regarding the letters will have to be addressed.

The information in any warning letter will be derived from what will undoubtedly be a test phase of the electronic enforcement systems and the so-called back-end processes, including review. If there are any issues, having those identified or brought to light because of the warning letters will not be a positive start. The testing of the systems and other processes should occur without anything being sent out. If warning letters are to be used, the letters should not include any images or photographs from the test phase.

There would also appear to be a lack of empirical evidence regarding the effectiveness of such letters. Given that the letters will simply indicate that HRM is or will be implementing new enforcement technology to identify and charge in instances where vehicles are operating in excess of the posted speed limit, or when vehicles fail to stop at red lights, it is unclear what the actual effect of the letters will be. The related offences exist in law – what is new is the method being used to detect the commission of the offences. If warning letters are being considered, consultation with the two police services is critical as the concept is out of step with traditional enforcement efforts. The proposed use of warning letters may create a completely different conversation in the public domain about similar letters being sent or issued by the police. The police services may also be concerned if warning letters are sent in instances where the speed is excessive - a warning letter is unlikely to be considered appropriate.

Yet another issue is the potentially short period of time in which warning letters would be sent and whether the overall cost of having warning letters is worth the relatively short shelf life. If HRM uses warning letters, the public will be able to measure how long it takes before the electronic enforcement systems go live. As with anything, there can be unexpected delays that arise that may cause going live to be pushed back or delayed. Questions could be asked about the length of that time and why, for example, HRM cannot simply lay charges. HRM may not want to explain the finer details of the operation of the equipment to maximize usable images. Sending warning letters would be embarking on a marked departure from traditional implementation strategies.

Traditional advice has been to lay charges where it is an offence in law and the evidence supports the charges. Usually, proclamation or the effective date of an offence-creating enactment is arranged or scheduled to ensure that law enforcement and the public are both aware of the new offence(s). Strategies may be invoked to ensure fulsome communication regarding the new offence(s). Unfortunately, when a different approach is taken – that of making the law effective but announcing that charges will not be laid for a period of time –the

situation can arise where drivers are breaking the law, and may be observed breaking the law, but no charges are laid. The resulting message is unclear at best, can result in a continuation of the behaviour and result in motorists taking exception when they are finally charged for behaviour that they have engaged in all along.

A final consideration is the use of the plate registration information provided to HRM by the Registrar of Motor Vehicles. When warning letters are being issued, it can be difficult to claim that the ownership information is being secured or used for a law enforcement purpose. Whether HRM can secure plate registration information for a purpose other than law enforcement invokes a myriad of considerations including privacy. In a similar manner, HRM may be exposed to Freedom of Information or other requests for access to the images being relied upon to issue the letters. In addition to the potential workload, this could have implications for when the HRM program goes live depending on whether the photo enforcement systems were being tested; whether image quality was being adjusted and so forth.

It is recommended that HRM not use warning letters prior to the laying of charges unless such use is a requirement imposed by the Province.

## 8.0 Program Models and Costing

Program model is the term used to indicate which of the program functions are performed by the level of government authorized to use photo enforcement (municipality for purposes of this Study) and which are performed by the vendor. Program models are determined by factors such as:

- ❖ Legislation, regulations, guidelines and evidentiary requirements
- ❖ Program economics (program costs vs revenues)
- ❖ Resource availability and capacities - technology, staff, etc.

In light of these factors, it is important to first look at the activities or ‘scope of work’ for the development, implementation and operation of a photo enforcement program. The section below overviews and details some of the activities which are required.

Photo Enforcement Scope of Work		
Planning & Preparation	Pre-Implementation	Ongoing Operations
<ul style="list-style-type: none"> <li>• Enforcement Device Selection</li> <li>• Enforcement Device Procurement &amp; Proof of Performance</li> <li>• Processing Solution Selection, Procurement &amp; Proof of Performance</li> <li>• Facility Site Selection</li> <li>• Establish Business Rules</li> <li>• Public Education Planning</li> <li>• Contract Negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Permitting &amp; Construction</li> <li>• Equipment Acceptance &amp; Testing</li> <li>• Site Approval &amp; Sign Off</li> <li>• Processing System Acceptance &amp; Sign Off</li> <li>• Supervisor/Officer/Admin Staffing &amp; Training</li> <li>• Establish Agreements and Interfaces Required for RMV Lookups</li> <li>• Establish Court Interface</li> <li>• Determine Method for Retrieving/Uploading Offence Data and Images</li> <li>• Facility Buildout</li> <li>• Communications &amp; Public Education</li> <li>• Signage</li> </ul>	<ul style="list-style-type: none"> <li>• Equipment Maintenance, Calibration and Certification</li> <li>• Location Rotation and Signage</li> <li>• Ongoing Staff Training</li> <li>• Image/Data Retrieval</li> <li>• Offence Processing</li> <li>• Customer Service</li> <li>• Court Filing</li> <li>• Ongoing IT Support &amp; Database Maintenance</li> <li>• Provide Officer for Court</li> <li>• Ongoing Data Gathering &amp; Review</li> <li>• Communications and Public Education</li> <li>• Ongoing HRM Council Updates</li> </ul>

### 8.1 Planning and Preparation

#### Enforcement Device Selection

A decision on which electronic enforcement system(s) to deploy must first be made: Red light camera, fixed speed camera, portable speed camera, handheld speed camera, bus lane camera.

The process of issuing photo enforcement tickets begins with what is referred to as a capture device. While different capture devices are used for enforcing different offences, they typically function in the following manner:

- ❖ Detects an event (speeding, failing to stop for a red light, transit lane infractions, etc.) through the use of radar, lidar, inductive loops or Artificial Intelligence (AI).
- ❖ Captures an image of the event, which includes the vehicle licence plate and other relevant information or data (i.e., traffic signals for red light offences).
- ❖ Superimposes on the image data that includes, for example, the date, time and location of the event as well as other relevant information such as posted speed limit, speed of the vehicle captured and so forth.
- ❖ Stores the images and data within the capture device until it is wirelessly or manually transmitted to an image processing center.

## Red Light Camera Systems



Red light camera systems vary in the method they use to capture events, the manner of installation and the roadside appearance.

To detect events, red light camera systems typically use inductive loops installed in the roadway as well as a speed measurement component such as radar or lidar. Although the most accurate method for detecting events, inductive loops are costly as the loops must be imbedded in the roadway. In addition, the installation and repair of the loops is disruptive to traffic and increases camera system down time.

Many jurisdictions are switching from loops to red light camera systems that have radar or lidar based detection systems. Experience has shown that advances in radar and lidar technology have increased the detection ability to levels close to those of inductive loops.

With respect to deployment options, some systems require an independent camera and/or flash pole to be installed, while other systems can be mounted on existing poles or gantries. Common to all red light camera systems is the need to be hard wired into the traffic signal controller box to detect signal phases. While some systems use AI to determine the signal colour, it is not as foolproof as a direct connection to the signal controller nor is it widely deployed.



## Speed Enforcement Camera Systems

Speed enforcement camera systems can be deployed in a number of ways:

### Vehicle Mounted



While vehicle mounted systems require the capital and operating investment in a vehicle, they offer the highest degree of flexibility in terms of the ability to change the location of enforcement. While some jurisdictions opt for 'stealth' vehicles such as unmarked minivans, pickup trucks or SUVs, others choose to deploy brightly coloured and noticeable vehicles based on the theory that the purpose of the program is to prevent – not catch –

motorists speeding. Various options available on the market include use of radar, lidar or scanning lidar.

### Portable

Placed roadside, portable speed camera systems offer a lesser degree of flexibility in changing locations. However, they are appropriately used when a medium term (1-3 months) of enforcement at a site is desired. They can be 'stealth' boxes, which generally look like a grey utility box on the side of the road, or they can be customized to stand out by bearing, for example, some safety messaging. Unlike fixed systems, they typically do not require an electrical connection and are battery powered. The ongoing maintenance requirements, which are typically the responsibility of the vendor, include lens cleaning, graffiti removal and snow clearing. The portable devices require specific sight line considerations that do not apply to fixed deployments.



### Fixed



Fixed speed enforcement camera systems are installed roadside, similar to the manner in which red light camera systems are installed. Deployment requires installation of a pole for the camera housing and flash as well as a power connection. There is not a great deal of flexibility in terms of changing locations of enforcement with this type of system. Some

jurisdictions install multiple poles and housings and rotate a smaller number of cameras amongst those installations.

The use of a fixed system is particularly effective in areas where a high and consistent level of enforcement is warranted. This could include particularly dangerous stretches of roadways or

areas where there are a high number of vulnerable road users such as children, seniors or cyclists.

### Handheld

Handheld systems also offer a high degree of deployment flexibility. They are typically used by officers standing at roadside, in vehicles or on motorcycles. Advantages of using the handheld system are:

- ❖ It provides the ability to enforce in areas where officer safety is compromised by vehicle stops in heavy traffic
- ❖ It eliminates the need to require the vehicle operator to stop while also providing the option to conduct a stop in the case of excessively high speeds
- ❖ It reduces the amount of paperwork that the officer must complete



Some jurisdictions use handhelds for freeway enforcement by stationing an officer with a device on an overpass, capturing speeding vehicles as they pass below.

### Trailer Mounted



Most motorists are familiar with what are commonly referred to as 'speed reader boards' which are deployed roadside. The trailers have a front facing radar which detects and posts the speed of passing vehicles as well as the posted speed. Speed enforcement trailers have an additional rear facing radar which detects the speed of the vehicle once it has passed the trailer. If the vehicle is travelling above the threshold speed, the event is captured for image review and offence processing.

This option provides a high level of transparency given the fact that the motorist is warned of their speed and if they choose not to reduce it, they are charged.

### Enforcement Device & Processing Solution Selection Procurement

Preparing, issuing and evaluating of the RFP to procure enforcement system(s) including a 'proof of performance' component is crucial to ensuring that the hardware, software and systems selected support laying charges and registering convictions. This includes ensuring the devices and software meet legislative, regulatory and evidentiary requirements. With regard to back end processing systems, it is important to consider the ease of the user interface and processes to ensure processing is efficient and unnecessary steps are avoided.

In addition, any vendor provided services such as maintenance that are required for the HRM's program model will need to be included. In both preparing the procurement document and also evaluating vendor responses. Ensuring vendor capability to meet program requirements will

help to ensure the program’s effectiveness and transparency in order to build and maintain public trust and support for the program.

### **Facility Site Selection**

Depending on the program model chosen, HRM may need to establish a plan to house any potential operational or offence processing activities.

### **Establish Business Rules**

Business rules that govern the way in which offences are processed and tickets are issued are required. These would include items such as: threshold speeds, out of province plates, policy for city vehicles (including police, ambulance, transit, etc.), plate readability, times of enforcement, and so forth.

### **Public Education Planning**

It is likely that the media and the public will be aware of the HRM’s consideration and approval of photo enforcement early in the process. To ensure that the HRM’s road safety messaging gets out ahead of the ‘cash cow’ arguments, it is important to have in place a proactive communications plan, which includes all stakeholders.

### **Contract Negotiations**

While most contract terms and conditions will be clearly proposed in an RFP, there are oftentimes minor amendments to the proposed terms that require some negotiation.

## **8.2 Pre-Implementation**

### **Establish Site Selection Criteria**

In order to maximize the benefit of photo enforcement – both from a perspective of public safety benefit and program transparency – careful consideration must be given to site selection. Enforcement sites should be located where the risk of red light running or speeding-related crashes, injuries, and fatalities is greatest as supported by data analysis.

The following are a few of the factors HRM should consider when selecting sites for photo enforcement:

- ❖ History of speed or red light running related collisions, fatalities and injuries
- ❖ Population density and concentration of vulnerable road users, especially pedestrians and cyclists;
- ❖ Proximity to sensitive community areas, such as schools, senior residences, hospitals, libraries, community centres, etc.;
- ❖ Existing roadway design features and infrastructure (e.g. lack of sidewalks or crosswalks);

- ❖ Adequate signage locations to inform drivers that they are approaching a municipal speed camera.
- ❖ Limitations of camera system, i.e., grade or curves in road

### **Permitting & Construction**

Any fixed form of red light or speed camera requires installation, access to electricity and possibly underground loops for detection. Municipal permits are required for the construction necessary for these systems. Whether these permits are the responsibility of the municipality or the vendor will depend on the program model chosen by the HRM.

### **Equipment Acceptance & Testing**

Once equipment is shipped, it will have to be received and placed at a location for staging and testing. Depending on the program model, this could be the responsibility of the vendor and or the HRM.

### **Site Approval & Sign Off**

Typically, the vendor works with the municipal staff to sign off sites so that once a camera system is deployed at a designated location, the camera system is able to capture images which meet the evidentiary requirements for the issuance of tickets, as stipulated in the RFP.

### **Processing System Acceptance & Sign Off**

If the offence processing system is procured from a vendor, municipal staff would work with that vendor to ensure that the system is able to process offences in accordance with the requirements of the RFP. If the offence processing system is built in-house, photo enforcement staff from the HRM would need to perform similar testing and acceptance exercises.

### **Supervisor/Officer/Administrative Staffing & Training**

Issuing officers and supervisory staff need to be hired and will require training on the offence processing software system, as well as the business rules, legislative, regulatory and evidentiary requirements for processing images and laying charges. If HRM staff will be operating or maintaining any of the field equipment, they will also need to be hired and trained.

### **Establish Agreements and Interfaces Required for Registration information Lookups**

In order to acquire registered vehicle ownership information required to lay charges, there should be an agreement with the Registrar of Motor Vehicles. Usually, an agreement for access to the information is written and specific to the function in the processing center. The legislation requires that there be a formal agreement respecting the request and use of owner information. It is acknowledged that access exists currently and it may only require formalization of this access.

### **Establish Court Interface**

Once charges are laid, they need to be filed with the Provincial Court office. In order to do this, an interface between the municipality's processing platform and the Court will need to be established and tested. HRM may be able to build on the existing technology between HRM parking, HRP and the provincial JEIN system

### **Determine Method for Retrieving/Uploading Offence Data and Images**

There are a number of options available to retrieve offence data and images from the camera systems for upload into the processing platform. They can be transmitted electronically encrypted at the time of capture and be sent wirelessly over a secure network to the processing facility. Although more labour intensive, they can also be manually downloaded to a portable hard drive and be securely transported to the processing facility.

### **Facility Buildout**

Except for cases where a municipality opts for a total turnkey program where the vendor is responsible for providing the facility or office space for offence processing, the municipality needs to identify a processing location including consideration for things like cabling, temperature control for server racks, connectivity, etc.

Once the facility has been built out, the offence processing hardware and software will need to be installed, including printers, desktops and servers.

### **Communications & Public Education**

Prior to the program going live, it is important to communicate the reasons why the municipality is implementing the program. These activities could include both earned and paid media overviewing key program features such as owner liability and the types of areas (school, playgrounds, etc.) where enforcement will be conducted. In the case of red light camera systems, victim stories from those involved in intersection collisions or family members can be particularly impactful.

### **Signage**

To the extent that signage is a requirement by legislation, regulation or guidelines, signs will have to be produced and installed in accordance with those requirements. Images of installed signs may need to be taken for use by officers in the processing centre.

## **8.3 Ongoing Operations**

### **Equipment Maintenance, Calibration and Certification**

Once the equipment (speed, red light or other) has been deployed, there will be need for ongoing maintenance, repair and in some cases, replacement. For example, if mobile versus fixed speed enforcement systems are selected for use in HRM, there will be additional requirements in relation to graffiti, tipping of the unit and so forth. Also, the Nova Scotia legislative regime regarding testing and certification to ensure that the camera systems

continue to perform in accordance with specifications will need to be met. Testing and calibration is addressed in more detail elsewhere in this Study.

If other program models are chosen HRM will need to plan to address routine as well as extraordinary maintenance.

### Location Rotation and Signage

If the municipality chooses a form of portable/movable enforcement system, a schedule for changing the camera system locations will need to be established. Also, arrangements will have to be made for the movement of the system from one location to another and ensuring that, if required, signage is installed to meet requirements.

### Ongoing Staff Training

From time to time, changes in processes or systems may require additional training for supervisors, officers or administrative staff. Also, increases in the number of images or offences or staff turnover could also create a need for additional training.

### Image/Data Retrieval

If an electronic method of retrieving and uploading data and images is not chosen, there will be an ongoing need for personnel to perform this function, which will require visiting each enforcement site 1 or 2 times per week. Depending on the program model, this will either be performed by the vendor or the municipality.

### Offence Processing

As the images and data are captured and uploaded to the processing facility, they will need to be reviewed to determine if, in fact, they capture offences, that the number plate is clear (identification of the person to be charged) and that a ticket should issue. The workflow for the various program models overviewed in the diagrams below:

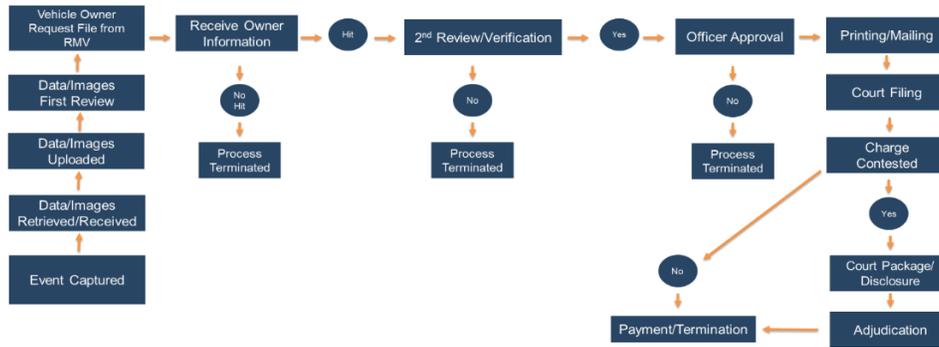
## Offence Processing Workflow

Hybrid or Municipally Operated



# Offence Processing Workflow

Vendor Operated



The legislation, regulations, guidelines and the program model chosen by HRM will dictate which of the above steps are completed by municipal staff and which are completed by the vendor.

Processes will need to be in place for the printing and service of the tickets in accordance with the Summary Proceedings Act and the related regulations, which currently requires service be completed by using registered mail.

## Customer Service

An infrastructure for addressing enquiries with respect to ticket issuance and status will need to be put in place. Some jurisdictions accommodate this additional volume through their existing court environment, while others address these enquiries with a separate infrastructure for photo enforcement.

## Court Filing

Charges will be filed electronically via the JEIN system and received by the provincial court office for processing. The Provincial court schedules court hearings, processes fine payments and forwards fines in default of payment to the RMV and to the provincial collections department. All information about charges is updated in the JEIN system. HRM will be required to work with the provincial court to ensure charge information is electronically filed and received in accordance with requirements and also that sufficient court capacity for hearings exists.

## Ongoing IT Support & Database Maintenance

Allocation of HRM IT staff will be required to provide technical support and database maintenance, working with the vendor's IT staff.

## Provide Officer for Court

Under the current Nova Scotia regime for summary offence proceedings, the officers who issue the charges will be required to testify at trial. Provisions should be made for officer training on how to testify in court and the extra time that the officer will be in court needs to be factored into the overall processing center schedule. HRM processing center and legal staff will need to develop a procedure for receiving details on cases scheduled for a court hearing.

### Ongoing Data Gathering & Review

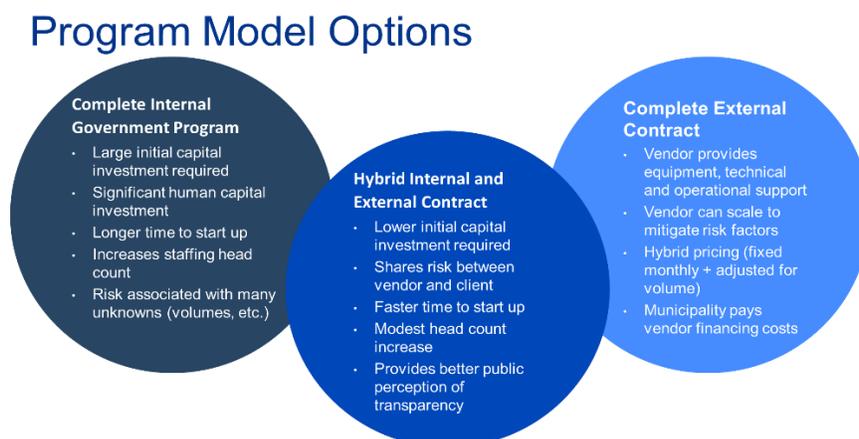
All effective photo enforcement programs are data driven. While program statistics related to enforcement are available through the offences processing platform, it will be necessary for HRM to conduct speed studies (volume of vehicles, average speeds, etc.) to both determine baseline data as well as the changes in statistics before, during and after enforcement. The information will also be needed to inform site selection and details regarding deployment.

### Communications and Public Education

In order to maintain public support for the photo enforcement program, ongoing communication and public education is vital. Mostly through earned media, it will be important to communicate information such as enforcement locations, ticket volumes, highest speeds and reductions in average speeds.

## 8.4 Program Model Options

As previously noted, the first factor to drive the decision in choosing a program model will be the legislation, regulations and HRM by-law. Guidelines, if any, issued by the Province should also be factored into the decision. By way of example, the legislative or regulatory framework in some jurisdictions may require specific steps of the offence processing workflow to be performed by municipal staff or designated officers. However, the one step in the process which is almost universally performed by a municipally employed officer is the actual laying of the charge. The optics of a vendor laying a charge are not good and could seriously undermine the integrity of the program.



Although variations are to be found in each jurisdiction's application of the models, there are essentially three models:

### **Complete Internal Government Program**

For an in-house model, HRM would procure the equipment and software required for the capture and processing of images and the issuance of tickets. HRM would provide all of the human resources to run the program. In a limited number of cases, for example in Edmonton, the municipality 'builds' their own platform for image processing and ticket issuance. With the exception of warranty work, HRM staff would be responsible for all activities related to equipment, including maintenance, camera rotations, repairs, etc. Additionally, HRM would be responsible for all staffing and training required to operate the processing function.

### **Complete External Contract**

A completely external or 'turnkey' model, HRM would procure the equipment and software to capture images and lay charges. The human resources required to operate the program would be provided jointly by the vendor and HRM. This division of labour would be set out in the Request for Proposals during the procurement phase and would be reflected in HRM's agreement with the vendor.

### **Hybrid Internal and External Contract**

In a hybrid model, HRM and the vendor each have a defined scope of work with respect to program startup and ongoing operations. Most common in Canada is a hybrid model in which the vendor supplies all of the system hardware such as camera systems, desktops, printers and servers as well as offence processing software. In addition, the vendor is responsible for maintaining all of the hardware and software. In a hybrid model, HRM staff would be responsible for the staff required to process, print and serve tickets.

## **8.5 Program Costing**

### **8.5.1 Estimating Charge Volumes**

In preparation for implementing a photo enforcement program, speed studies provide invaluable information which determines problem areas in need of enforcement, estimated ticket volumes and also provide baseline data for program evaluations.

For the purpose of this feasibility study, HRM and the Halifax Regional Police Service (HRPS) provided speed data collected at various times from locations throughout the HRM. To level out the results, the two highest volume sites and the two lowest volume sites were removed to get an average representation of typical sites. While each data set was compiled over a varying number of days, the volumes were averaged out by day in order to establish estimated monthly volumes.

Assuming that the speed measuring devices utilized were photo enforcement devices, and that enforcement occurred at speeds in excess of 10 km/hour over the posted speed limit, the following potential ticket volumes would have been generated in one month of deployment:

### Estimated Monthly Ticket Volumes Based on Data Provided

Location	Start	End	Days	Total Volume	Posted Speed	Enforcement Speed	Above Enforcement Speed	Estimated # of tickets issued monthly
1	5/18/2021	6/4/2021	17	21012	50	60	117	210
2	6/25/2021	6/28/2021	3	1528	50	60	3	31
3	6/20/2019	6/24/2019	4	1148	50	60	4	31
4	5/9/2020	5/20/2020	11	32684	50	60	10,419	28,889
5	10/3/2018	10/15/2018	12	3012	60	70	3	8
6	7/26/2019	8/9/2019	14	43275	60	70	12	26
7	5/17/2021	5/24/2021	7	4376	50	60	1,427	6,218
8	5/27/2019	5/29/2019	2	3067	50	60	7	107
9	4/28/2021	5/11/2021	13	17417	50	60	1,155	2,710
10	5/19/2021	6/1/2021	13	18959	50	60	2,038	4,781
11	4/27/2021	5/11/2021	14	19320	50	60	13,129	28,602
12	6/7/2021	6/18/2021	11	33803	50	60	10,192	28,260
13	5/31/2019	6/12/2019	12	7031	50	60	198	503
14	4/24/2019	5/8/2019	14	42719	60	70	29	63
15	4/19/2021	5/2/2021	13	69401	60	70	524	1,229
							39257	101,667

While these volumes of vehicles detected travelling above the enforced speed reflect the number of potential infractions, there are additional factors which come into play when attempting to determine potential photo enforcement charge numbers based on these figures.

These factors include:

- ❖ The difference, if any, between the tolerated speed and threshold speed established by the program.
- ❖ Changes in driver behaviour based on awareness of photo enforcement program. In other jurisdictions, this resulted in 25%-30% reduction in average speeds
- ❖ Weather – rain, snow and sun position can each reduce ticket issuance activity
- ❖ Hours/days of operation
- ❖ Camera location – high volume/speed roads vs low volume/speed roads
- ❖ Equipment malfunctions

Given that the information provided by the HRP does not reflect the factors above, we believe that a more accurate comparison would be found by looking to the charge volumes in the initial year of a similar photo enforcement program. We have analysed the first 13 months of the City of Toronto’s Automated Speed Enforcement program. In doing so, assuming HRM were to use 8 cameras, the following was determined:

Number of Cameras Deployed:	50
Total 13-month charge volume:	223,870
Average number of charges per month:	18,656
Average number of charges per camera, per month:	373
Total estimated charges per month	2,984

### 8.5.2 Estimating Potential Revenue

Once HRM has determined the number of cameras it wishes to deploy, the following assumptions can be used to estimate potential ticket revenues for an HRM Photo Speed Enforcement Program:

1. That each camera would capture events resulting in 373 charges per month<sup>31</sup>.
2. That 60% of the charges would be at the lower (\$237.50) fine amount and that 40% of the charges would be at the higher (\$295) fine amount.
3. HRM would receive \$100 for each fine paid in the lower fine range (lower rate of excess speed) and \$150 for each ticket paid in the higher fine range (higher rate of excess speed). The Province would, for each ticket paid, retain the victim fine surcharge (15% of the HRM fine amount). The Province would also retain \$122.50 in court costs from each ticket paid.
4. Camera systems, at least initially, would operate for a limited number of hours at each site to ensure that the processing capacity is not exceeded.
5. All charges will result in convictions and all fines will be paid at the out of court payment amount. However, experience in other jurisdictions suggests that this will not be the case.

### 8.6 Program Models – Summary and Conclusion

In summary, an HRM Complete Internal Government Program would have the highest startup costs, and the lowest level of overall net revenue on a five-year projection. This is due to the requirement for HRM to fund the capital investments which would include items such as the purchase of hardware for image and data capturing, servers, printers, desktops and workstations for processing, buildout of facility and so forth. While this program model requires the highest level of upfront investment, the overall cost is not significantly higher than the other two models. It is also noted that while this model requires the highest upfront capital investment, net program revenue projections over a five-year contract term would allow the HRM to recoup those costs and likely still show an excess of revenue over cost. Additionally, there would be a need to increase headcounts to manage and operate the program as well as acquire the expertise to develop a program which will be new to the HRM.

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<sup>31</sup> Based on the information above in Section 8.5.1, relative to the startup period of the Toronto ASE program.

Conversely, a Complete External Contract provides the lowest upfront capital investment as the majority of those investments are made by the vendor and recovered by way of a monthly per camera fee which is paid over the term (usually five years) of the contract. However, as the vendor is likely financing those capital investments, the vendor's carrying costs – plus a markup – is charged to the client. As a result of this, the overall cost for a five-year program with a Complete External Contract is the highest cost of the three options discussed in this study. One of the key features of the vendor model is that the vendor's staff typically perform the initial review of events captured by the camera system and submit them to a municipally employed officer for final review to determine whether to lay charges. While this model has proven to be effective in some programs, there is often the perception that the vendor (i.e., private sector) should not have any involvement in the charging process. While this model provides the highest level of cost, it results in the least draw on HRM resources. In the vendor model, the role of HRM would be to direct where and how the equipment is deployed, how often it is moved, the actual issuance of the tickets and supervision/management of the program.

The Hybrid Internal and External Contract program model is similar in cost to the HRM operated model and allows for the benefit of vendor experience in program setup and operation, without the added cost of the vendor's markup on services that would be provided by HRM. HRM will also benefit from having the active participation of the vendor in relation to application and technology changes that may be desirable including those that are considered by other users of the product. Although each hybrid model contract contains variations in the split in which activities are performed by the vendor and which are performed by the municipality, most of these differences are related to ticket processing activities. Additionally, utilizing a hybrid model will likely allay any concerns of the Privacy Commissioner with respect to vendor access to personal information such as vehicle registration data.

In conclusion, each of the program models considered as part of this Study offer HRM the same level of control over such factors as times of deployment, business rules, threshold speeds and so on. At the same time, each model requires differing levels of upfront and total cost, as well as differing levels of HRM human resources and expertise.

While the Complete Internal Government Program bears the lowest overall cost, it also requires the greatest learning curve and effort on the part of HRM and its staff to become familiar with the steps required to set up and operate a photo enforcement program. Oftentimes, this steep learning curve can result in lessons learned the hard – and costly – way, easily eroding any of the anticipated cost savings over other prospective models.

The Complete External Contract provides for a program which results in the least impact on HRM infrastructure and human capital, it also comes at the highest cost. Additionally, there could be concerns raised by the public that the vendor is profiting from the volume of tickets issued.

All program models overviewed in this Study would support and accommodate expansion of a photo enforcement program, whether the expansion is limited to additional HRM enforcement

or an expansion which would include offence processing on behalf of additional Nova Scotia municipalities.

The Study team recommends that HRM adopt the Hybrid Internal and External Contract program model, as it is best suited to provide for HRM's requirements in establishing and operating a successful, accountable and cost-effective photo enforcement program. The implementation of this model will provide HRM with the expertise and infrastructure it requires for the program without causing unnecessary strain on already limited municipal resources. The other options, while not recommended at this time, bear consideration once the program has been established and becomes operationally stable.

## **8.7 Scalability**

It is important to note that recommendations set forth in this Study regarding the change in service from registered to regular mail and the prescription of tickets that would, if implemented, be available to any municipality in Nova Scotia that decides to implement a photo enforcement program.

In the four years prior to proclamation of the Traffic Safety Act, there will be opportunities for HRM staff to outreach to other municipalities to determine their interest and feasibility. Should other municipalities decide to proceed, the HRM processing centre could provide processing support for other municipalities, as the Hybrid Internal and External Program recommended in this Study, is capable of providing for an expandable multi-jurisdictional program. However, it should be noted that this would require advance notice, planning and the execution of various agreements.

While HRM will have the capacity for an expandable multi-jurisdictional program, such an expansion would be subject to the various aspects and considerations that might be applicable in other municipalities, specifically and generally. This Study sets forth the critical information or recipe for the development and implementation of a photo enforcement program in HRM. Other municipalities would need to obtain and analyse the respective data as a first step in determining whether a program can exist, followed by a review of the model selected by HRM and a local examination of model preference. It is impossible to predict the outcome of this work. HRM should not select a program model based on the possibility of other municipalities being interested in photo enforcement.

## 9.0 Funding

### 9.1 Funding Program Start Up

Should HRM decide to continue to explore the use of photo enforcement and undertake the activities outlined within this Study there will be a need to identify a source of funds to support this work. Project work may occur over a period of three to four years. It is recognized that one possibility is that HRM and/or the Province may not proceed with using photo enforcement, therefore not providing an offset for the costs incurred by HRM in the pre-implementation activities. In this case, HRM will need to identify a source of funds within an existing approved allocation or seek Council approval to proceed.

The Study outlines a number of activities that would need to be completed prior to proclamation of the Traffic Safety Act, the making of the associated regulations and approval of new HRM by-laws by Council. Should HRM proceed as early as 2022 to commence this preliminary work, an estimated budget of approximately \$266,000 would be required to fund two positions- project manager and engineering technologist - each year for up to four years. HRM may wish to consider adding this to the annual operating budget as there would be no offsetting fine revenue during this time. A second option to consider would be to allocate this expense as a recoverable cost to be offset from any surplus revenue received following the photo enforcement program implementation. The risk of carrying the pre-implementation costs forward however could result in an accumulated financial pressure should HRM determine that it will not proceed with a photo enforcement program.

A dedicated reserve fund comprised of fine revenue may be a reasonable source to offset ongoing program expenditures together with funding future enhancements including expansion if necessary.

### 9.2 Potential Surplus Revenue

As noted previously, section 292 of the Traffic Safety Act states what is required to be done with surplus fine revenue from the use of electronic enforcement systems:

*Where the fine revenue of Her Majesty in right of the Province or a municipality from convictions based on evidence from electronic enforcement systems exceeds the costs of acquiring and using the systems, Her Majesty or the municipality, as the case may be, shall use the surplus fine revenue for the purpose of enhancing road safety.*

The actual fine component belongs to HRM and the Province retains the victim fine surcharge, currently 15% of the fine, and the court costs, currently \$122.50 for each ticket issued, irrespective of whether the matter is simply paid as an out of court settlement or a trial is held. An electronic enforcement system program should deter behaviour over time and, as a result, operate at a loss or breakeven. It should not be a money-making undertaking but a road safety

tool. As seen from the wording of Section 292, there is no detail describing what might be considered as an expense required to enhance road safety.

In the event of surplus fine revenue, HRM has the benefit of statutory direction with regard to the use of such surplus fine revenue. It is recommended that HRM determine whether such surplus monies, if any, can flow through general revenue and be allocated by the budget process to be used for specific road safety enhancements or whether a dedicated road safety fund for such monies, if any, should be established. Some examples of use of surplus monies exist in the reports prepared by other jurisdictions. A clear connection to specific road safety enhancements and the expense is essential and it is necessary to ensure that all expenditures can be justified accordingly. Some examples might include increased spending on road safety communications through media, expansion of photo enforcement sites should the data support this, traffic calming improvements, public roadway and sidewalk improvements, lighting improvements, and so forth.

Tracking of expenses funded from surplus fine revenue and providing regular updates on these initiatives is strongly encouraged. This will be an important part of re-assuring the community that the existence of a photo enforcement program offers additional community benefits and that it is not simply a program to generate non-tax revenue for the municipality.

## 10.0 Staffing Requirements

### a. Project Management

From the point where HRM decides to move forward with additional analysis, planning and consultation leading up to a determination that proceeding with a photo enforcement is desirable, it is recommended that a full time Project Manager be assigned.

Leading up to the implementation of the program, the Project Manager would be charged with the responsibility for such as activities as:

- Overseeing the collection and analysis of the data required to inform program justification, scope, anticipated volumes, types of enforcement and potential locations.
- Coordinating and managing the internal resources (Transportation, IT, Legal, HR) required to implement the photo enforcement program.
- Leading the efforts, on behalf of HRM, to liaise and work with the provincial government to ensure that the necessary legislative and regulatory amendments are developed and in place to provide for the successful launch and implementation of the program.
- Developing and overseeing a project plan, to be approved by HRM Council, which clearly charts the course and activities required to develop and implement HRM's photo enforcement program.
- Responding to and generating reports and other data requests, including media and Councillors.

Once the program is up and running, the role of the Project Manager would switch to that of a Program Manager, with overall responsibility for overall and day-to-day oversight of the program.

### b. Road Safety Engineering

As with staffing requirements for most areas of a photo enforcement program, the need for road safety engineering staff will be dictated by the program model which the HRM chooses.

Regardless of the model chosen, road safety engineering analyst/technologist will be required to assist in collecting and analyzing data as referenced elsewhere in this study to inform program justification, scope, anticipated volumes, types of enforcement and potential locations.

The collection and analysis of data will be an ongoing requirement to provide evaluation and program transparency and effectiveness.

### c. Field Operations

The requirement for field operations staff will predominantly be dictated by the program model chosen by the HRM.

For a Complete Internal Government program, the HRM will need to deploy field service personnel to maintain and rotate cameras from one location to another. Additionally, these employees would trouble-shoot problems with the cameras, install signage, perform system checks and assist with the determination of site feasibility.

For a Complete External or Hybrid Internal and External Contract program, the vast majority of the field operations work – as mentioned above - will be performed by the vendor. The main exception to this will be the installation of signage.

#### **d. Processing**

Offence processing will require staff to view images and data, request registered owner information from the Department of Motor Vehicles, issue charges, print/mail offence notices and serve the charging documents. The number of staff members required is, again, dependent on the program model. For the purpose of this study, we have estimated that for a Complete Internal Government or Hybrid Internal and External Contract program 2.5 FTEs would be required. For a Complete External program 1 FTE would be required.

#### **e. Administration**

The requirement for ‘administration’ is broad and could include a number of program elements. These could include the actual administration of the processing function with activities such as ordering and maintain supplies, staff scheduling and other support duties. In the broader picture, it could include the requirement for additional staff to manage payments, respond to resident enquiries and so on.

The requirement for administrative staff will vary based on a number of factors such as program model and offence volumes. For the purpose of this study, it is recommended that, as the HRM moves forward with a photo enforcement program, consideration be given to all areas of the administration that could be impacted. These include, but are not limited to:

- ❖ Human Resources -staffing, training and other corporate resources
- ❖ Finance – payment processing, collections, routine audits, financing reporting
- ❖ External Communications/Public Awareness – earned and paid media, social media
- ❖ Information Systems and Technology support
- ❖ Internal Communications – Mayor, Councillors
- ❖ Police – likely minimal requirement, related to site selection and enforcement rules

#### **f. Court Services**

As court services are provided by the Province of Nova Scotia, and funded through the Province’s portion of ticket revenue, HRM will not be responsible for providing Court staff.

#### **g. Prosecutions**

It is anticipated that HRM would require one legal counsel/prosecutor to fulfill their prosecutorial and program support obligations. An increase in the per diem prosecutor funding may also be required due to the potential increase in dispute rate/expansion of night courts.

#### **h. Corporate Oversight (Audit Requirements)**

There may be oversight requirements with respect to providing statistical reports in response to Council requests or provincial reporting requirements. It is anticipated that these would be provided by the Program Manager. Additionally, any program audits within HRM that may be required or mandated by the Province are anticipated to be performed by HRM staff within existing staffing allocations.

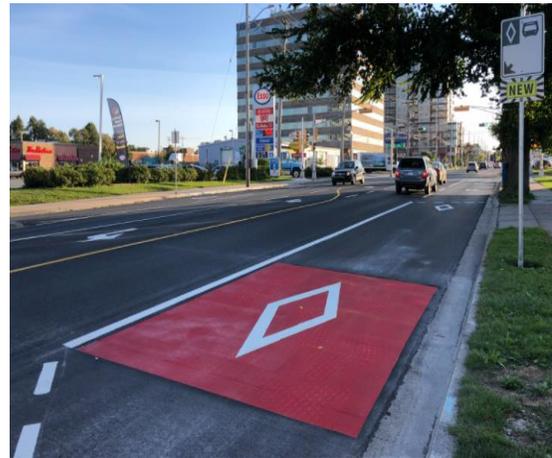
#### **i. Provincial Requirements**

As this is likely to be a predominantly HRM driven and managed program, the extent of the Province's involvement, and hence the provincial staffing requirements are undetermined at this time and beyond the scope of this Study.

## 11.0 Transit Lane Enforcement

### 11.1 Overview

Many cities and transit agencies are finding that road congestion is having the effect of increasing operating costs while also increasing travel times for commuters. Increases in costs and travel times frequently cause public transit ridership levels to drop. To counter this challenge, many cities have implemented 'bus only' lanes for either the morning and evening rush hours, or all times of day. In these cases, transit lanes are signed and/or painted to denote their use only for transit vehicles.



### 11.2 Enforcement

Traditionally, enforcement of these offences has been challenging insofar as the police pulling a vehicle over usually results in the lane being blocked – which is what they were trying to avoid in the first place. Some jurisdictions began installing cameras on the street allowance to use photos to enforce the law. Unfortunately, the high installation cost and having a stationary camera made it difficult to determine if a vehicle was travelling in a bus lane illegally or only for the purpose of making a right turn.

Current photo enforcement solutions include placing a camera, which uses Artificial Intelligence (AI) to determine offences, on the bus itself. The camera system includes GPS which documents the location of each event captured so that locations which see a high level of infractions can be noted and receive, if desired, additional enforcement by police.

### 11.3 Additional Benefits

In addition to documenting offences for enforcement, current bus lane enforcement systems gather additional data that is invaluable to transit properties. This can include information which can be used to reduce headways – the distance between buses. By reducing delays caused by unlawfully parked or travelling vehicles, headways can be improved, reducing capital costs by reducing the number of buses and also the associated labour, operating and maintenance costs.

In the Tom Tom 2019 Traffic Index Ranking – which provides the most accurate picture of rush hour traffic around the world – HRM ranks higher than other major Canadian cities like Calgary and Edmonton. Even more concerning is the fact that HRM commutes rank 2nd most congested for small cities in North America. This adds an extra 25% to travel times, which equates to an additional 5 days.

By decreasing travel time on buses, the HRM could increase ridership which in turn would ease congestion by reducing the number of passenger vehicles on roadways.

#### **11.4 HRM Transit Lane Infractions**

For the purpose of determining the need for transit lane enforcement in the HRM, discussions were held with staff from Halifax Transit, Halifax Regional Police and the R.C.M.P. While each party provided anecdotal evidence that transit only lane abuse is an increasing problem in HRM, there appears to be a lack of data or documentation quantifying the extent of the problem. HRM Transit staff estimated that their drivers see in the neighbourhood of 40-50 infractions per day. This will require further investigation.

#### **11.5 Bus Lane Photo Enforcement – New York City Example**

In response to increasing headways on a number of bus routes in New York City, the



Metropolitan Transportation Authority (MTA) implemented a curb-mounted photo enforcement program in 2011. The program was expanded in 2019 to include on-bus cameras. The program, which includes some 21 New York City corridors, has resulted in increasing bus speeds on some corridors by as much as 55%.

#### **1.6 Moving Forward with Transit Lane Photo Enforcement**

Provided that the Province includes the related offence (s) in the list of authorized offences for which photo enforcement can be used and provided that the Province includes the specific photo enforcement system characteristics or features in the regulations, the legislation would appear to allow for this deployment of photo enforcement. However, given the findings in this Study that there is a complete lack of data and consensus that there is a problem with regard to transit lane misuse, HRM staff should not prioritize or include this deployment in discussions with the Province until the basis for use is determined.

As for the potential compatibility of the photo enforcement system for the detection of transit lane misuse and other photo enforcement systems, it is unlikely that the systems per se will be compatible; however the images captured can be received and reviewed in the same processing centre as other photo enforcement images and charges laid where appropriate.

## Appendix 1 - Acknowledgements

We appreciated the opportunity to have had discussions with the following individuals during interviews and this Study incorporates what we learned. Thank you everyone for your time.

### **HRM Department of Transportation and Public Works**

Samantha Trask  
Sarah Rodger  
Taso Koutroulakis  
Roddy MacIntyre

### **Halifax Regional Police**

Superintendent Greg Mason  
Sergeant Brian Palmeter

### **Nova Scotia Department of Justice**

Daniel Boudreau  
Christine Eisan

### **Nova Scotia Department of Public Works**

Brent Connolly

### **HRM Access and Privacy Office**

Nancy Dempsey  
Frans Sanders

### **Royal Canadian Mounted Police**

Inspector Jeremie Landry

### **HRM Legal Department**

Joshua Judah  
Jim Janson  
Nick Foran

### **HRM Parking Services**

Victoria Horne  
Steve Berkman  
Jeff Nephew

### **Service Nova Scotia and Municipal Relations**

Paul Arsenault

### **City of Toronto Transportation Services**

Trevor Kanhi

## Appendix 2 - Technical Review of Statutory Provisions

### Legislation and regulations that directly relate to the use of photo enforcement<sup>32</sup>

#### 1. Traffic Safety Act, SNS 2018, c 29.

The Traffic Safety Act was passed in 2018 but has yet to be proclaimed. The Act is intended to replace the outdated and often amended Motor Vehicle Act. It was originally understood that proclamation by the Nova Scotia Government would occur when the consultation process on the regulations to be made under the Act was completed; however, in October, 2021 the government announced that proclamation would not occur for another three to four years. The Traffic Safety Act is expected to be the foundation that HRM will build on to develop and implement a program of photo enforcement.

#### A. Provisions specific to electronic enforcement systems

The main electronic enforcement system provisions are as follows:

##### Section 311

*(1) Where a vehicle or other conveyance is involved in an offence for which an electronic enforcement system is authorized to be used for enforcement pursuant to this Act and the regulations or by-law, and the number plate is captured by an electronic enforcement system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable on summary conviction to the fine provided for the offence.*

*(2) Subsection (1) does not apply if the owner satisfies the court that, at the time that the vehicle or other conveyance was involved in the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner's express or implied consent.*

*(3) A person who is guilty of an offence pursuant to this Section is not subject to (a) the addition of demerit points; or (b) the suspension of a driving privilege for the offence.*

##### Section 312

*(1) An image obtained through the use of an electronic enforcement system is admissible in evidence in a proceeding commenced pursuant to the Summary Proceedings Act respecting an alleged offence if the image (a) shows a vehicle or conveyance and the number plate displayed on it; and (b) displays, or has appended to it, the prescribed information in relation to the provision.*

*(2) In the absence of evidence to the contrary, an image as described in subsection (1) is proof of the number plate displayed on the vehicle or other conveyance and of the information displayed on the image or appended to the image.*

*(3) In any prosecution based on evidence obtained through the use of an electronic enforcement system, a certificate (a) stating the result of the test of the electronic enforcement system identified in the certificate; (b) stating that the test was conducted at a specified time that is within the time prescribed in the regulations or the by-law before or after the date of the offence charged; and (c) purporting to be signed by an electronic enforcement system tester who is*

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<sup>32</sup> This section does not include a review of the Motor Vehicle Act, the statute being replaced by the Traffic Safety Act, unless otherwise noted.

authorized by the regulations or a by-law to test electronic enforcement systems of the type identified in the certificate, is, in the absence of evidence to the contrary, admissible in evidence as proof of the facts stated in the certificate without proof of the signature or designation as a vehicle tester of the person signing the certificate.

Subsection 45(1) authorizes a council of a municipality to make by-laws

*(n) respecting the use of electronic enforcement systems;*

Subsection 45(2)

*A by-law made under subsection (1) may (a) prescribe the fees for any licence provided for in the by-law; (b) establish offences and penalties, not exceeding any limit prescribed by the regulations, for a contravention of the by-law; (j) provide for exemptions from the application of the by-law;*

**Regulation making authority specific to electronic enforcement systems is found in the provisions above and in the following sections:**

Section 2: Defines an “electronic enforcement system” as meaning an electronic system prescribed by the regulations.

Section 5: *The Governor in Council may make regulations respecting the definitions set out in Section 2 including, without limiting the generality of the foregoing,*

*(a) prescribing what things are a device, vehicle or conveyance*

*(h) prescribing vehicles as being emergency vehicles*

*(j) prescribing systems as being electronic enforcement systems*

*(l) prescribing individuals as being law enforcement officers;*

*(za) prescribing any other matter that is to be prescribed by the regulations.*

Section 79 provides for a regulation making authority including one specific to photo enforcement: *The Minister may make regulations: (e) respecting the use of electronic enforcement systems.*

**B. Provisions specific to owner liability**

Section 2 of the Traffic Safety Act sets out a number of relevant definitions:

*“number plate”, with respect to a vehicle, means the number plate associated with a vehicle permit, if any, required to be attached to the vehicle;*

*“owner”, with respect to a vehicle, means*

*(a) where a permit is issued for the vehicle, the holder of the permit for the vehicle;*

*(b) where no permit is issued for the vehicle, the registered owner of the vehicle; or*

*(c) where no permit or registration certificate is issued for the vehicle, any person who alone or jointly with one or more other persons has the right to transfer property in the vehicle;*

*“register”, with respect to a vehicle, means to register the vehicle in the register of vehicles maintained by the Registrar;*

*“Registrar” means the person designated as the Registrar of Motor Vehicles under this Act;*

*“registration certificate”, with respect to a vehicle, means a registration certificate issued under this Act or the laws of another jurisdiction certifying that the vehicle is duly registered under this Act or the law of the other jurisdiction, as the case may be;*

*“vehicle permit” means a vehicle permit issued under this Act in respect of a particular vehicle;*

Section 311 specifically provides for owner liability when electronic enforcement systems are in use.

(1) Where a vehicle or other conveyance is involved in an offence for which an electronic enforcement system is authorized to be used for enforcement pursuant to this Act and the regulations or by-law, and the number plate is captured by an electronic enforcement system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable on summary conviction to the fine provided for the offence.

(2) Subsection (1) does not apply if the owner satisfies the court that, at the time that the vehicle or other conveyance was involved in the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner's express or implied consent.

(3) A person who is guilty of an offence pursuant to this Section is not subject to (a) the addition of demerit points; or (b) the suspension of a driving privilege for the offence.

Owner liability is set out, generally, in subsection 310(1):

Where an offence involving a vehicle or other conveyance is committed under this Act, the regulations or a by-law made under this Act, the owner of the vehicle or conveyance is liable on summary conviction to the fine provided for the offence.

### **C. Provisions specific to offences that could be authorized as offences that can be enforced by photo enforcement**

Section 2 defines:

"conveyance" means anything in, on or by which any person or property is or may be transported or drawn on a highway and includes

- (a) a vehicle;
- (b) a bicycle;
- (c) a personal transporter;
- (d) a pedicab;
- (e) a rickshaw;
- (f) an animal being ridden, herded, led or driven;
- (g) an off-highway vehicle;
- (h) a recreational apparatus; and
- (i) any other thing prescribed by the regulations, but does not include a mobility aid;

"intersection" means that area within the straight extension or connection of the lateral lines of the curbs or edges of the roadways of two or more intersecting highways that join one another at an angle, regardless of whether one or more of the highways cross

"emergency vehicle" means a vehicle prescribed by the regulations;

"official traffic signal" means a traffic signal placed on, near or above a highway that

- (a) conforms to a description or standard prescribed by the regulations; and
- (b) regulates traffic on the highway in accordance with instructions set out in the regulations;

"speed limit" means the maximum speed at which a vehicle or other conveyance is permitted to travel

"stop", with respect to a vehicle or other conveyance, means

- (a) where required, a complete cessation of movement; or
- (b) where prohibited, any halting, even momentarily, of the vehicle or other conveyance, irrespective of whether it is occupied, except if necessary to avoid conflict with other traffic or following the direction of a peace officer, traffic control person or traffic control device;

*“traffic control device” means a traffic sign, traffic signal, traffic signal light, highway markings or another device put in place under this Act on, near or above a highway to regulate, warn, guide or inform persons using the highway;*

*“traffic signal light” means a device put in place under this Act as a traffic control device to alternate the right of way between or among conflicting streams of traffic by way of signals indicated by the device;*

*“vehicle” means anything in, on or by which any person or property is or may be transported or drawn on a highway, but does not include*

*(a) a tow dolly that fulfils the requirements prescribed by the regulations;*

*(b) a motorized mobility aid;*

*(c) a power-assisted bicycle, regardless of whether its motor is engaged;*

*(d) a conveyance propelled by human power; or*

*(e) a device used exclusively on stationary rails or tracks;*

#### Section 20:

*(1) A traffic authority may place official traffic signs or official traffic signals on, near or above a highway under the traffic authority’s jurisdiction.*

*(3) A municipality may cause traffic control devices, other than official traffic signs or official traffic signal lights, to be placed on, near or above a highway in the municipality under the jurisdiction of the municipal traffic authority.*

#### Section 21:

*(1) The fact that a traffic control device has been placed is evidence, in the absence proof to the contrary, that the device has been placed in compliance with this Act and the regulations and the matter stated on or represented by the device complies with this Act and the regulations.*

#### Section 162:

*(1) No person driving a vehicle or other conveyance on a highway shall fail to stop the vehicle or other conveyance when required to do so under the regulations or directed to do so by a traffic control device, traffic control person or peace officer.*

#### Section 172:

*The speed limit or minimum speed applicable to a portion of a highway is (a) the speed limit or minimum speed indicated on a traffic sign posted at the beginning of the portion of the highway; or (b) where there is no traffic sign indicating the speed limit or minimum speed, the speed limit or minimum speed applicable to the portion of the highway under the regulations.*

#### Section 173:

*(1) No person shall drive a vehicle or other conveyance on a highway in excess of the speed limit.*

*(2) No person shall drive a vehicle or other conveyance on a highway in excess of the speed limit by more than 15 kilometres per hour.*

*(3) No person shall drive a vehicle or other conveyance on a highway in excess of the speed limit by more than 30 kilometres per hour.*

*(4) Subsections (1) to (3) do not apply in the circumstances prescribed by the regulations.*

#### Section 174: Speeding in Temporary Work Areas

*(1) No person shall drive a vehicle or other conveyance in a temporary work area in excess of the speed limit.*

*(2) No person shall drive a vehicle or other conveyance in a temporary work area in excess of the speed limit by more than 15 kilometres per hour.*

*(3) No person shall drive a vehicle or other conveyance in a temporary work area in excess of the speed limit by more than 30 kilometres per hour.*

*(4) Subsections (1) to (3) do not apply in the circumstances prescribed by the regulations.*

Section 175: Speeding in School Areas

*(1) No person shall drive a vehicle or other conveyance in a school area in excess of the speed limit.*

*(2) No person shall drive a vehicle or other conveyance in a school area in excess of the speed limit by more than 15 kilometres per hour.*

*(3) No person shall drive a vehicle or other conveyance in a school area in excess of the speed limit by more than 30 kilometres per hour.*

*(4) Subsections (1) to (3) do not apply in the circumstances prescribed by the regulations.*

Section 217 provides a regulation making authority, in paragraph 217(2) (j) for the Governor in Council to make regulations regarding the failure to stop and in paragraph 217(2) (r) for the Governor in Council to prescribe the speed at which a vehicle or other conveyance may be driven on a highway;

**D. Provisions specific to the authority to review images, lay charges**

Section 2 of the Traffic Safety Act defines:

*“law enforcement officer” means an individual prescribed by the regulations as being a law enforcement officer;*

*“peace officer” means a person authorized to enforce this Act and includes a motor vehicle inspector, a police officer and a person prescribed by the regulations;*

*“police officer” means a member of the Provincial Police, the Royal Canadian Mounted Police, a municipal police department or another police department providing policing services in the Province;*

Section 5: *The Governor in Council may make regulations respecting the definitions set out in Section 2 including, without limiting the generality of the foregoing,*

*(l) prescribing individuals as being law enforcement officers;*

*(za) prescribing any other matter that is to be prescribed by the regulations.*

Section 78:

*The Governor in Council may make regulations*

*(a) respecting traffic authorities;*

*(b) respecting peace officers and their authority in relation to traffic safety including, without limiting the generality of the foregoing.....*

**E. Provisions specific to agreements for access to Registrar’s records and fees to be charged**

Subsection 59 (2): requires information to be provided or reports to be made to the Registrar or Provincial Traffic Authority pertaining to traffic safety matters, collisions or such other matters as may be prescribed by the regulations. It would be reasonable for such reports to be part of the access agreement or, at minimum, a condition of such access.

Section 268:

*(1) The Registrar may disclose some or all of the information in the Registrar’s records as permitted under an information sharing agreement to*

*(a) an entity responsible for similar records in another jurisdiction;*

*(b) a law enforcement officer or peace officer; or*

*(c) where the information is being disclosed for a purpose prescribed by the regulations, a person prescribed by the regulations.*

Section 297:

*(1) The Minister, with the approval of the Governor in Council, may enter into an agreement with an entity in another jurisdiction respecting the sharing of records maintained under this Act or similar legislation in the other jurisdiction.*

*(2) The Minister, with the approval of the Governor in Council, may enter into an agreement with an entity in another jurisdiction respecting reciprocity in relation to any matter to which this Act relates for the purpose of supporting the enforcement and administration of this Act.*

*(3) The Minister may enter into an agreement with any person in the Province in relation to any matter to which this Act relates for any purpose consistent with the purpose of this Act.*

Section 319: *The Minister may make regulations*

*(f)(vi) prescribing the purposes for which and the persons to whom the Registrar may disclose some or all of the information in the Registrar's records as permitted under an information sharing agreement,*

Section 323:

*The Minister may make regulations respecting fees payable in relation to anything done under this Act and the regulations.*

**F. Provisions specific to electronic documents or records**

Section 4:

*A reference to a form, document, record, information or other data that may be issued, submitted, filed or required by this Act or the regulations includes a form, document, record, information or other data contained in an electronic form if the issuance, submission, filing or acceptance in electronic form is permitted by (a) this Act or the regulations; or (b) where the form, document, record, information or other data is issued by, submitted to, filed with or required by the Registrar or a traffic authority, the Registrar or traffic authority.*

Section 318: *The Governor in Council may make regulations*

*(b) permitting the issuance, submission, filing or acceptance under this Act of a form, document, record, information or other data in electronic form.*

## **Legislation and Regulations that directly relate to trials or prosecutions and fines, including unpaid fines**

### **1. Traffic Safety Act, SNS 2018, c 29**

Owner Liability: Section 310 of the Traffic Safety Act sets out detail regarding owner liability that is relevant in relation to prosecutions or trials.

*(1) Where an offence involving a vehicle or other conveyance is committed under this Act, the regulations or a by-law made under this Act, the owner of the vehicle or conveyance is liable on summary conviction to the fine provided for the offence.*

*(2) Subsection (1) does not apply if the owner satisfies the court that, at the time of the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner's express or implied consent.*

*(3) Where, pursuant to this Act, the regulations or a by-law made under this Act, an offence involving a vehicle or other conveyance is committed, the driver is liable on summary conviction to all of the penalties and other consequences provided for the offence.*

*(4) Subject to subsection (5), the owner of the vehicle or other conveyance is not subject under this Section to (a) the addition of demerit points; or (b) the suspension of any driving privilege for the offence, unless the owner was the driver at the time of the offence.*

*(5) Where the owner of a vehicle or conveyance is present at the time of any contravention of this Act, the regulations or a by-law made under this Act by another person who is driving, both the owner and the driver are guilty of the offence and liable to all of the penalties and other consequences provided for the offence.*

There is a specific section regarding owner liability when electronic enforcement systems are in use:<sup>33</sup>

Section 311:

*(1) Where a vehicle or other conveyance is involved in an offence for which an electronic enforcement system is authorized to be used for enforcement pursuant to this Act and the regulations or by-law, and the number plate is captured by an electronic enforcement system, the owner of the vehicle or other conveyance to which the number plate is assigned is liable on summary conviction to the fine provided for the offence.*

*(2) Subsection (1) does not apply if the owner satisfies the court that, at the time that the vehicle or other conveyance was involved in the offence, the vehicle or other conveyance was in the possession of some person other than the owner without the owner's express or implied consent.*

*(3) A person who is guilty of an offence pursuant to this Section is not subject to*

*(a) the addition of demerit points; or*

*(b) the suspension of a driving privilege for the offence.*

Evidence of ownership: Section 280:

*(1) A copy or extract, appearing to be certified by the Registrar, of any book, record, document or register in the possession of the Registrar, or a certificate appearing to be signed by the Registrar certifying certain facts appearing in the records of the Registrar, is admissible in evidence in a proceeding and is proof of the contents of the original without proof of the signature or appointment of the Registrar.*

*(2) A certificate appearing to be signed by the Registrar certifying that*

*(a) a licence or other authorization has or has not been issued to a certain person;*

*(b) a certain person is or is not the registered owner, permit holder or owner of a certain vehicle; or*

*(c) a number plate or other vehicle document has or has not been issued to a certain person, is admissible in evidence and is proof of the matters in the certificate without proof of the signature or appointment of the Registrar.*

Section 281:

*(1) A document appearing to be signed or certified by an official in another province of Canada performing duties similar to those of the Registrar, or a facsimile of the document, is admissible in evidence, without proof of the signature or the appointment of the person who signed it, and is proof of its contents in the absence of evidence to the contrary.*

*(2) A document appearing to be signed or certified by the Minister or an officer appointed or given authority under this Act is admissible in evidence, without proof of the signature, appointment or*

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<sup>33</sup> Noted above and repeated here.

authority of the person who signed it, and is proof of its contents in the absence of evidence to the contrary.

Section 285:

(1) Where the Minister, the Registrar or any employee or officer of the Department or a municipality is required or authorized under this Act to sign a document, the document is deemed to be signed if the signature is affixed digitally or by means of an engraving, lithograph, stamp or other facsimile.

(2) Subsection (1) applies mutatis mutandis to documents issued under the laws of another province of Canada or a state of the United States of America in relation to the subject matter of this Act.

Electronic records: Section 4:

A reference to a form, document, record, information or other data that may be issued, submitted, filed or required by this Act or the regulations includes a form, document, record, information or other data contained in an electronic form if the issuance, submission, filing or acceptance in electronic form is permitted by (a) this Act or the regulations; or (b) where the form, document, record, information or other data is issued by, submitted to, filed with or required by the Registrar or a traffic authority, the Registrar or traffic authority.

Section 318:

The Governor in Council may make regulations

(c) permitting the issuance, submission, filing or acceptance under this Act of a form, document, record, information or other data in electronic form.

Creation of Record of Convictions: Section 267:

(1) The Registrar shall create a record for each person

(a) to whom a document has been issued under this Act; or

(b) in respect of whom the Registrar has reason to believe the person has done anything in contravention of this Act.

(2) The Registrar shall create a driving record for each individual which may include the information prescribed by the regulations.

(3) The Registrar shall create a record for each vehicle for which a registration certificate or permit is issued, which may include the information prescribed by the regulations.

Trials/Prosecutions:

Speeding: If photo enforcement is to be used to detect and enforce the offence of speeding, the following sections, in addition to the provision in subsection 311(2), may come into play:

Section 288: For greater certainty, it is not a defence to a charge of speeding contrary to a specific provision of this Act that the person was in fact speeding by more kilometres per hour than set out in the provision under which the charge was laid.

Section 289: For greater certainty, where a person is charged with speeding contrary to a provision of this Act and the evidence does not prove the offence but proves speeding contrary to another provision of this Act, the defendant may be convicted of the other offence.

Fines including unpaid fines:

Section 275:

(1) Where a defendant is convicted of a second or subsequent offence, the penalty for that offence may be the penalty specified for a first offence if it has not been shown that the defendant received sufficient notice that an increased penalty for a second, third or subsequent offence may be imposed.

(2) Where it is disclosed during a trial that the defendant has previously been convicted of the same offence or it has been shown that the defendant received sufficient notice that an increased penalty for a second, third or subsequent offence may be imposed, the justice shall impose the penalty

*prescribed for a second, third or subsequent offence, as the case may be, if the person is found guilty, regardless of whether the fact that it is a second, third or subsequent offence is stated in the charge.*

**Section 291:**

*(1) Subject to subsection (2), a fine and costs imposed under this Act is payable to Her Majesty in right of the Province and must be deposited in the General Revenue Fund.*

*(2) A fine and costs imposed under this Act are payable to a municipality if they were imposed for a conviction for an offence under this Act in which the informant was a police officer, special constable or other officer of the municipality.*

**Section 296:** *Her Majesty in right of the Province or a municipality may recover a fine and costs payable to Her Majesty or the municipality under this Act, with costs, in a civil action in any court having competent jurisdiction to hear a claim for the amount of the fine and costs.*

**Section 306:** *A person who contravenes a provision of this Act, the regulations or a by-law made under this Act is guilty of an offence and liable on summary conviction to the penalties prescribed for that offence by the regulations.*

**Section 308:** *Where a corporation commits an offence under this Act, the regulations or a by-law made under this Act, a director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to the penalties set out for the offence, whether or not the corporation has been prosecuted or convicted.*

**Section 140:**

*(1) The Registrar shall suspend the vehicle permit or special-purpose permit issued to a person for a vehicle, or the privilege of a person to obtain a vehicle permit or special-purpose permit for a vehicle, if the Registrar is satisfied that:*

*(j) the owner is in default of a fine or cost imposed upon a conviction for an offence (i) under this Act, the former Act, the Criminal Code (Canada) or another enactment of the Province, a federal enactment or an enactment of another province of Canada in relation to the ownership, driving or use of a vehicle, or (ii) under a municipal by-law involving the unlawful parking, standing or stopping of a vehicle;*

*(l) in the case of a vehicle for which a special-purpose permit was issued, the vehicle was driven in contravention of the permit; or*

*(m) the circumstances prescribed by the regulations exist.*

*(3) Subject to subsection (4), where the Registrar suspends a person's vehicle permit or special-purpose permit under subsection (1) or (2), the Registrar may also suspend any other vehicle permit or special-purpose permit issued to the person and the person's privilege of obtaining a vehicle permit or special-purpose permit for any other vehicle.*

*(7) Where a person is required to return a suspended permit to the Registrar, there is no valid permit until a new permit is issued by the Registrar, even if the person did not return the permit and the person's privilege of obtaining a permit is reinstated.*

*(8) A suspension under this Section is in addition to and not in substitution for any proceeding or penalty arising from the same circumstances.*

**Section 293:**

*(1) Where a person is in default of payment of all or part of a fine and costs imposed upon conviction for an offence prescribed by the regulations, the court that imposed the fine and costs shall forward to the Registrar a notice of the default, in the form and manner required by the Registrar.*

*(2) The court may amend or discontinue a notice of default as provided for in the regulations*

Section 319: The Minister may make regulations

*(ii) prescribing information that may be included in the record of a vehicle for which a registration certificate or permit is issued,*

*(g) prescribing offences under this Act, the regulations or a by-law made under this Act for which a court that has imposed a fine and costs upon a conviction of a person shall forward to the Registrar a notice of default upon the person defaulting on the payment of the fine and costs;*

Fine Revenue:

Section 292:

*Where the fine revenue of Her Majesty in right of the Province or a municipality from convictions based on evidence from electronic enforcement systems exceeds the costs of acquiring and using the systems, Her Majesty or the municipality, as the case may be, shall use the surplus fine revenue for the purpose of enhancing road safety.*

Other provisions include:

Section 294: *There shall be paid to the Department such fees as the Governor in Council may determine for any registration, permit, licence, certificate or other document issued under this Act or for any service performed or rendered by the Registrar or the Department and the payment of the fee so determined is a condition precedent to the issue of any such permit, licence, certificate or other document and to the performing or rendering of any such service.*

Section 295:

*(1) Her Majesty in right of the Province has a first lien on a vehicle or other conveyance for the amount of any fine and costs payable to Her Majesty under this Act by the owner or driver of the vehicle or other conveyance in relation to a contravention of this Act or the regulations involving the vehicle or other conveyance.*

*(2) Subject to any first lien of Her Majesty in right of the Province under subsection (1), a municipality has a first lien on a vehicle or other conveyance for the amount of any fine and costs payable to the municipality, as the case may be, under this Act by the owner or driver of the vehicle or other conveyance in relation to a contravention of this Act, the regulations or a bylaw made under this Act involving the vehicle or other conveyance.*

*(3) Where any fine and costs is not paid within 30 days after being imposed, or such longer time as may be allowed by a court, the holder of a first lien on a vehicle or other conveyance under this Section may seize the vehicle or other conveyance.*

*(4) A vehicle or other conveyance seized under subsection (3) may be sold and the proceeds of sale distributed in accordance with the regulations.*

Section 318: The Governor in Council may make regulations

*(b) respecting the recovery of fines and costs imposed under this Act, including*

*(i) respecting the amendment and discontinuance of a notice of default forwarded to the Registrar by a court, and*

(ii) respecting the sale, transfer of ownership and the distribution of the proceeds of sale of a vehicle or other conveyance seized under subsection 295(3);

Section 320: *The Governor in Council may make regulations respecting offences and penalties, including (a) establishing offences and penalties in relation to contraventions of this Act or the regulations, including establishing different penalties for the owner or carrier, by class of licence or vehicle, or other circumstances of the offence;*

Section 321:

(1) *The Governor in Council may make regulations authorizing, for the period of time during which the regulations are in force, a project for research into or the testing or evaluation of any matter that is governed by this Act and relates to the use of highways, including regulations...*

(2) *A regulation made under this Section expires two years after the date on which it comes into force or such earlier date as the regulation may specify.*

Section 322: *The Governor in Council may make regulations*

(a) *exempting any person, matter or thing from the application of any provision of this Act or the regulations;*

(b) *defining any word or expression used but not defined in this Act;*

(c) *further defining any word or expression defined in this Act;*

(d) *respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.*

## **2. Summary Proceedings Act, RSNS 1989, c 450**

Section 2:

(1) *Subject to any special provision otherwise enacted, this Act applies to*

(a) *every case in which a person commits or is suspected of having committed any offence or act over which the Legislature has legislative authority and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment; and*

(b) *every case in which a complaint is made to any justice in relation to any matter over which the Legislature has legislative authority and with respect to which the justice has authority by law to make any order, whether for the payment of money or otherwise.*

(2) *Notwithstanding any special provision relating to appeals in any enactment, in every case referred to in clauses (a) and (b) of subsection (1), provisions of this Act relating to appeals shall apply to each such case instead of the special provisions relating to appeals in the enactment and all appeal proceedings taken under the enactment shall be taken up and continued under and in conformity with the provisions of this Act as far as consistently may be.*

Section 3: *Except where it is otherwise provided, any penalty or imprisonment prescribed by an enactment shall be recovered or enforced on summary conviction before a justice of the peace or judge of the provincial court.*

Section 4: *Everyone who, without lawful excuse, contravenes an enactment by wilfully doing anything that it forbids or by wilfully omitting to do anything that it requires to be done is, unless some penalty or punishment is expressly provided by law, guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for six months or to both.*

Section 4A: *Upon conviction following a hearing, the defendant shall pay a charge of one hundred and twenty-two dollars and fifty cents...*

Section 4B: Notwithstanding Section 4,

*(b) where an enactment makes an offence punishable as a category B offence, a judge shall impose a fine of not less than fifty dollars for the first offence, not less than one hundred dollars for the second offence and not less than two hundred dollars for the third or a subsequent offence;*

*(c) where an enactment makes an offence punishable as a category C offence, a judge shall impose a fine of not less than one hundred dollars for the first offence, not less than two hundred dollars for the second offence and not less than four hundred dollars for the third or a subsequent offence;*

*(d) where an enactment makes an offence punishable as a category D offence, a judge shall impose a fine of not less than one hundred and fifty dollars for the first offence, not less than three hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;*

*(e) where an enactment makes an offence punishable as a category E offence, a judge shall impose a fine of not less than two hundred dollars for the first offence, not less than four hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;*

*(f) where an enactment makes an offence punishable as a category F offence, a judge shall impose a fine of not less than two hundred and fifty dollars for the first offence, not less than five hundred dollars for the second offence and not less than one thousand dollars for the third or a subsequent offence;*

Section 7A: *In applying the provisions of the Criminal Code (Canada) to proceedings under this Act, service of a summons may be made by registered mail and, for all purposes of this Act, the sending of the summons by registered mail is and is deemed to be personal service or delivery of the summons without proof of delivery or acceptance.*

Section 8:

*(1) In addition to the procedure set out in the Criminal Code (Canada) for laying an information and for issuing a summons, an information may be laid and a summons issued by means of a ticket in accordance with this Section for an offence under any provision of an Act or regulation or municipal by-law designated by the regulations.*

*(2) A ticket under this Section shall include provision for the information, summons, report and police record.*

*(3) The Attorney General and Minister of Justice may make regulations*

*(a) prescribing the form of the ticket;*

*(aa) prescribing the form of a plea of guilty on a summons;*

*(ab) prescribing the form of the notice of intention to appear for the purpose of pleading guilty to an offence and making a submission as to penalty;*

*(ac) prescribing the form of the notice of intention to appear for the purpose of entering a plea of not guilty and having a trial of a matter;*

*(ad) prescribing the form of the certificate of a justice striking out a conviction;*

*(ae) prescribing the fee for an application to strike out the conviction pursuant to subsection (18);*

*(b) designating offences under provisions of Acts or regulations or municipal by-laws for the purposes of this Section;*

*(c) authorizing the use on a ticket of any word or expression to designate an offence under any provision of an Act or regulation or municipal by-law designated by the regulations;*

*(d) respecting any matter that he considers necessary to provide for the use of the ticket.*

*(5) Where the offence charged in the ticket is one for which the penalty may be paid out of court, the officer issuing the summons may enter the amount of the penalty in the place provided therefor on the ticket, and such entry constitutes the indorsement required by subsection (1) of Section 9.*

(6) *The penalty to be entered on the summons pursuant to subsection (5) shall be the minimum penalty for the offence and a charge of one hundred and twenty-two dollars and fifty cents.... unless the Attorney General by order otherwise directs.*

(7) *The use on a ticket of any word or expression authorized by the regulations to designate an offence under any provision of an Act or regulation or municipal by-law designated by the regulations is sufficient for all purposes to describe the offence designated by such word or expression.*

(8) *Upon completing a ticket, the issuing officer shall print his name so that it appears on the summons portion and shall deliver the summons portion to the person charged with an offence therein and delivery of the ticket summons in accordance herewith shall be deemed to be personal service.*

(9) *Delivery of a ticket summons may be made on a holiday.*

(10) *The issuing officer shall sign the information portion of the ticket and certify that he personally delivered the summons portion of the ticket to the person accused therein and the certification shall be in the following words: I certify that I did personally deliver the summons portion of this ticket to the accused on the . . . . . day of . . . . ., 19. . . .*

(11) *A certificate of delivery purporting to be signed by the issuing officer shall be received in evidence as sufficient proof of personal service in the absence of evidence to the contrary.*

(12) *Every ticket information shall be*

*(a) signed by the informant; and*

*(b) deposited, together with the ticket report of conviction, with the proper justice.*

(13) *The ticket information need not be sworn to before a justice or any other person and the informant need not be the same person as issued the ticket summons.*

(13A) *A person who is served with a ticket summons shall*

*(a) where the person does not wish to dispute the charge,*

*(i) sign the plea of guilty on the summons and, within the time specified in the summons, deliver the summons and amount of the penalty specified in the summons to any Provincial Court office in the Province, or*

*(ii) where the person wishes to make a submission as to penalty, including the extension of time for payment, file in prescribed form, within the time specified in the summons, with the clerk of the court a notice of intention to appear for the purpose of pleading guilty to the offence and making a submission as to penalty; or*

*(b) where the person wishes to dispute the charge,*

*(i) file in prescribed form, within the time specified in the summons, with the clerk of the court a notice of intention to appear in court for the purpose of entering a plea of not guilty and having a trial of the matter, and*

*(ii) include in the form the person's mailing address, telephone number, facsimile number and electronic mail address.*

(13B) *Where a person has delivered a notice of intention to appear in accordance with subsection (13A),*

*(a) the clerk of the court shall, as soon as practical, give notice to the person and the prosecutor of the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty; and*

*(b) the person shall attend at the time and place specified in the notice.*

(13C) *The clerk of the court may send a notice to a person by mail, facsimile or electronic mail and, where the notice is sent to the person by mail, facsimile or electronic mail, the notice is deemed to have been received by the person.*

(13D) Acceptance by the court office of payment under subclause (i) of clause (a) of subsection (13A) constitutes a plea of guilty whether or not the plea is signed and the endorsement of payment on the certificate of offence constitutes the conviction and imposition of a fine in the amount specified in the summons for the offence.

(13E) A justice may require a submission as to penalty to be made orally under oath or by affidavit.

(13F) A signature on a ticket summons or notice of intention to appear purporting to be that of the defendant is proof, in the absence of evidence to the contrary, that it is the signature of the defendant.

(14) Where a justice makes a conviction on a ticket information in respect of an offence under a provision of an Act or regulation regulating traffic, he shall complete the ticket report of conviction and forward it to the Registrar of Motor Vehicles and it shall be deemed to be compliance with Section 266 of the Motor Vehicle Act.

(15) Where a person is served with a ticket summons and the person has not acted within the time specified in the summons as required by subsection (13A) or where a person who has given notice of an intention to appear fails to appear at the time and place appointed for the hearing, the person is deemed to not wish to dispute the charge and a justice shall

(a) where the information portion of the ticket is complete and regular on its face, enter a conviction in the person's absence without a hearing and impose

(i) the minimum penalty authorized by law for the offence or, where another penalty for that offence has been directed by the Attorney General for out of court settlement pursuant to subsection (6), that other penalty, and

(ii) a charge of one hundred and twenty-two dollars and fifty cents... ;

(b) where the information portion of the ticket is not complete and regular on its face, quash the proceeding and advise the issuing officer that the proceeding has been quashed.

(15A) For greater certainty, where the ticket

(a) indicates that the ticket is for a second or for a third or subsequent offence; and

(b) correctly references the out-of-court settlement amount prescribed for a second or for a third or subsequent offence, the ticket is sufficient notice to the defendant that an increased penalty may be imposed and, where the information portion of the ticket is complete and regular on its face, a justice, including a justice entering a conviction in a person's absence in accordance with subsection (15), shall impose the increased penalty.

(16) Where the justice enters a conviction pursuant to subsection (15), he shall, by ordinary mail, notify the defendant of the entry of the conviction and his right to apply for a hearing pursuant to subsection (17A) or (18).

(17) No proceeding may be taken to collect a penalty and the charge imposed pursuant to subsection (15) sooner than thirty days after the date on the notice to the defendant.

(17A) Where a person who has been convicted as a result of a failure to act as required by subsection (13A) attends at the court office during regular office hours within sixty days of the conviction and requests that the conviction be struck out, the clerk of the court shall

(a) strike out the conviction;

(b) give the person a certificate of that fact in the prescribed form; and

(c) give the person and the prosecutor notice of the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty.

(18) Where a person who has been convicted as a result of a failure to

(a) act as required by subsection (13A) and more than sixty days have elapsed; or

*(b) appear at the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty, after having given a notice of intention to appear, the person may appear before the court and the justice or the judge, as the case may be, upon payment of the prescribed application fee and being satisfied that*

*(c) the person demonstrates a prima facie defence to the offence charged in the ticket; (d) the person has a reasonable excuse for failing to appear; and*

*(e) the person acted without unreasonable delay, shall strike out the conviction, give the person a certificate of that fact in the prescribed form and give the person appearing and the prosecutor a notice of trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty.*

*(19) Upon the motion of a duly authorized prosecutor, a justice of the peace or a judge of the provincial court shall strike out a conviction entered pursuant to subsection (15).*

*(20) Where a conviction is struck out pursuant to subsection (19) and the defendant has an opportunity to be heard, the judge may order the defendant to pay costs in an amount not exceeding ten dollars or such other amount as the Governor in Council may from time to time determine.*

*(21) Where a conviction is struck out pursuant to subsection (18) or (19), the justice or judge, as the case may be, shall, upon the request of the defendant, give the defendant a certificate of the fact in the prescribed form.*

#### Section 8B:

*(1) Notwithstanding anything contained in this Act, a ticket or certification referred to in Section 8 or 8A may be completed and signed by electronic means in an electronic format and may be filed by direct electronic transmission if the completion, signature and filing are in accordance with the regulations.*

*(2) A printed copy of a ticket or certification filed pursuant to subsection (1) is deemed to have been filed as the original document if it is printed in accordance with the regulations and for the purpose of disposing of a charge under this Act.*

*(3) The Attorney General and Minister of Justice may make regulations respecting*

*(a) the completion and signing of tickets or certifications by electronic means;*

*(b) the filing of tickets or certifications by direct electronic transmission; the printing of tickets or certifications filed by direct electronic transmission.*

#### Section 9:

*(1) There may be indorsed upon a summons a notice that the person to whom the summons is directed may pay out of court a specified penalty.*

*(2) Where a summons is so indorsed, it must provide for a plea of guilty in the form prescribed in the regulations.*

*(4) The officer or other person delivering the summons indorsed under this Section shall not receive payment of the penalty payable out of court, or any part thereof.*

*(5) Upon receipt of the summons with the payment or partial payment of the out of court penalty as it provides which shall include a charge of one hundred and twenty-two dollars and fifty cents ..., a justice may convict the person to whom the summons is directed of the offence described in the summons.*

*(6) For greater certainty, a conviction entered upon receipt of a summons with the partial payment of an out-of-court penalty pursuant to subsection (5) does not relieve the person convicted of the obligation to pay the balance remaining of the out-of-court penalty*

#### Section 16A:

*(1) Where an offender is in default of payment of a fine, in addition to any other method provided by law for recovering the fine, the person or body to whom the proceeds of the fine belong may, by filing the order, enter as a judgment the amount of the fine, and costs, if any, in any civil court in the Province that has jurisdiction to enter a judgment for that amount.*

*(2) An order that is entered as a judgment pursuant to subsection (1) is enforceable in the same manner as if it were a judgment obtained by the person or body, as the case may be, in a civil proceeding.*

**Section 17:**

*(1) The forms in Schedule A, or forms to the like effect, shall be sufficient in the cases for which they are prescribed.*

*(2) The Governor in Council may make regulations prescribing forms in addition to those in Schedule A.*

*(3) The exercise by the Governor in Council of the authority contained in subsection (2) shall be regulations within the meaning of the Regulations Act.*

**Section 18:**

*(1) The Governor in Council may make regulations adding enactments to or deleting enactments from Schedule B.*

### **3. Summary Offence Tickets Regulations, NS Reg 4/2001**

**These Regulations set out the detail regarding the issuance of charges and penalties.**

This includes, under section 4, how the offence may be described. There are three options:

- (a) the words set out in the applicable Schedule, opposite the number of the Section provided for the offence*
- (b) the words of the enactment*
- (c) a concise expression that sufficiently describes the offence to the accused*

Section 9 sets forth the provisions regarding the form of summary offence tickets. A summary offence ticket is to be in Form A, as prescribed by NS Reg 281/2011.

Section 10 authorizes a form of a plea of guilty to be included in the form of the prescribed ticket.

Section 11 provides for a notice of intention to appear. It must be in Form A-1 and is to be used for the purpose of pleading guilty to the offence and making submissions as to penalty or for the entering of a plea of not guilty and having a trial.

**Section 11A:**

*(1) A summary offence ticket may be completed electronically if the data required to be recorded for the ticket meets all of the following criteria:*

- (a) it is the same or substantially the same as the information required by Form A and is capable of being printed in accordance with Section 11D;*
- (b) it is intelligible and is in an electronic format that is compatible with JEIN;*
- (c) it cannot be altered after the ticket has been signed electronically in accordance with Section 11B, other than to elaborate on, compress or encrypt coded data as necessary for transmission to JEIN.*

*(2) A requirement in Section 8 of the Act for a person to enter or print information on a summary offence ticket is satisfied by provision of the information as part of the automated function of an electronic data system used to complete the ticket electronically.*

**Section 11B:**

- (1) A summary offence ticket may be signed electronically in accordance with this Section.
- (2) A summary offence ticket that is signed electronically must contain a unique code, name or number assigned to a person that identifies that person as the originator of the data entered or attested to by that person.
- (3) The code, name or number referred to in subsection (2) must be
  - (a) generated by electronic means and attached to the data entered or attested to by that person; and
  - (b) reasonably secure against unauthorized use.
- (4) For the purpose of clause (3) (b), a code, name or number is presumed reasonably secure against unauthorized use if it meets 1 of the following:
  - (a) the physical means of generating it are themselves protected;
  - (b) the electronic means of generating it are themselves a secure code or those means are protected by a password issued in confidence to the signer.

Section 11C:

- (1) A summary offence ticket that is completed and signed electronically in accordance with Sections 11A and 11B may be deposited under subsection 8(12) of the Act if all of the following conditions are met:
  - (a) the data is transmitted without alteration to JEIN;
  - (b) the data is received in its entirety by JEIN;
  - (c) JEIN transmits an acknowledgment of receipt to the originating computer system confirming receipt of intelligible data.
- (2) Once the data for a summary offence ticket is received by JEIN, the systems manager of JEIN must ensure that the data remains complete and unaltered.

Section 11D:

- (1) For the purpose of printing an original document under subsection 8B(2) of the Act, a summary offence ticket that is completed, signed and filed electronically in accordance with these regulations must meet all of the following printing requirements:
  - (a) it must be printed in the form prescribed by subsection 9(1);
  - (b) it must be approved by the clerk of the court.
- (2) Any portion of a summary offence ticket that is completed or signed electronically and printed for the purpose of processing the ticket must be printed in the form prescribed by subsection 9(1).

Section 11E:

- (1) A person must not alter the data for a summary offence ticket that is filed electronically, except to add data as permitted by this Section.
- (2) The clerk of the court may authorize adding any data to complete the record of conviction portion of a ticket that is filed electronically, including adding any of the following:
  - (a) the disposition of the proceeding in which the ticket was used;
  - (b) the details of any enforcement measures.
- (3) A justice may use electronic means to examine a summary offence ticket that is filed electronically, to do any of the following:
  - (a) add any data required to complete the record of conviction in accordance with subsection (2);
  - (b) electronically sign the ticket in accordance with Section 11B.
- (4) A person authorized to add data in accordance with this Section may do so only if the person has access to the summary offence ticket data through a password issued to the person in confidence.

(5) *Decoding and expanding coded data or abbreviations based on tables of concordance does not constitute alteration of the data of a summary offence ticket.*

The regulations set out the out of court settlement amounts (penalties payable on receipt of the ticket) that are currently applicable to listed offences committed under the existing Motor Vehicle Act.<sup>34</sup> The amounts below, pursuant to section 7 of the Regulations, are comprised of the penalty for the offence, the \$122.50 (applicable to non-parking offences) charge provided for in the Summary Proceedings Act (see above) and the victim fine surcharge, per below, if applicable.

OFFENCE DESCRIPTION, SECTION & CATEGORY OF PENALTY	OUT OF COURT SETTLEMENT AMOUNTS		
	FIRST OFFENCE	SECOND OFFENCE	THIRD AND SUBSEQUENT OFFENCE
FAIL TO STOP AT RED LIGHT- 93(2)E - CATEGORY- B	\$ 180.00	\$ 237.50	\$ 352.50
DRIVING IN LANE WITH RED X TRAFFIC LANE SIGNAL-93(4)(b) CATEGORY- B	\$ 180.00	\$ 237.50	\$ 352.50
FAIL TO STOP FOR STOPPED SCHOOL BUS W/FLASHING RED LIGHTS-103(3) CATEGORY-F	\$ 410.00	\$ 697.50	\$ 1,272.50
FAIL TO PROCEED WITH CAUTION WHEN PASSING SCHOOL BUS EXHIBITING FLASHING ABMER LIGHTS- 103(4) CATEGORY -D	\$ 295.00	\$ 467.50	\$ 812.50
SPEEDING OVER POSTED SPEED OR OTHER MAX SPEED LIMIT IN ACT BY 1-15KM/H, INCLUSIVE, IN OTHER THAN TEMPORARY WORK AREA-106A(a) CATEGORY-C	\$ 237.50	\$ 352.50	\$ 582.50
SPEEDING OVER POSTED SPEED OR OTHER MAX SPEED LIMIT IN ACT BY 16-30KM/H, INCLUSIVE, IN OTHER THAN TEMPORARY WORK AREA-106A(b) CATEGORY-D	\$ 295.00	\$ 467.50	\$ 812.50
SPEEDING OVER POSTED SPEED OR OTHER MAX SPEED LIMIT IN ACT BY 31 KM/H OR MORE IN OTHER THAN TEMPORARY WORK AREA-106A(c) CATEGORY-F	\$ 410.00	\$ 697.50	\$ 1,272.50

The Regulations provide for the striking out of a conviction, including a fee for the application to strike out of \$54.50 for one matter and \$81.75 for two or more applications made on the same day. Pursuant to subsection 18(2) the maximum amount of costs that a judge can order to be paid by a defendant when a conviction is struck out is \$20.00. By way of example, the out of court settlement amount for speeding over the posted or other maximum speed limit in an act by 1-15 km/hour is \$237.50. When paid, the court cost portion of \$122.50 together with the victim fine surcharge of \$15.00 are both retained by the Province leaving a balance of \$100.00 that is remitted to HRM. The victim fine surcharge is currently prescribed to be 15% of the fine amount and applies in the circumstances as more fully outlined below.

#### 4. **Victims’ Rights and Services Act, SNS 1989, c 14**

Section 7 sets out the authority for the imposition or collection of the victim fine surcharge:

- (1) *Where a fine is imposed on a person pursuant to a Provincial enactment, the person shall, in addition to the fine, pay to the court imposing the fine a victim-fine surcharge equal to the amount determined by multiplying the fine by a percentage prescribed by the regulations.*
- (2) *Where a person is convicted of an offence but no fine is imposed in respect of the offence, the victim-fine surcharge pursuant to subsection (1) shall be as prescribed by the regulations.*
- (3) *Subsections (1) and (2) do not apply*

<sup>34</sup> At time of writing the penalties, if any, specific to authorized offences when electronic enforcement systems are used are not known.

(a) where a fine is imposed on a person pursuant to the Young Persons Summary Proceedings Act;

(b) in respect of a parking offence; or

(c) to an enactment prescribed by the regulations as an enactment to which this Act does not apply.

(4) Where a person referred to in subsection (1) or (2) establishes, to the satisfaction of the court imposing the fine or entering the conviction, that undue hardship to that person or the dependants of that person would result from the imposition of a victim-fine surcharge, the court may, by order, exempt that person from the surcharge or part of the surcharge.

(5) The court shall provide reasons for an order made pursuant to subsection (4).

Section 14: sets out the regulation making authority and provides that the Governor in Council may make regulations:

(a) prescribing a percentage for the purpose of determining the amount of the victim-fine surcharge;

(b) prescribing the victim-fine surcharge for the purpose of subsection (2) of Section 7;

(c) prescribing the enactments to which the victim-fine surcharge does not apply;

## **5. Victim Fine Surcharge Rate Regulations, NS Reg 343/89.**

Section 2 of the Regulation provides that the percentage prescribed is fifteen percent.

## **6. Police Act, SNS 2004, c 31**

Section 37:

(1) A municipal police department shall consist of a chief officer and such other members, special constables, by-law enforcement officers and civilian employees as the council, after consultation with the board, may from time to time determine.

(2) The remuneration of the chief officer, other members, special constables, by-law enforcement officers and civilian employees shall be determined from time to time by the council.

(6) No person shall perform the function of a municipal police officer unless directly employed by a municipality or a police department providing services to a municipality pursuant to this Act.

Section 42:

(1) A member of the Provincial Police, the Royal Canadian Mounted Police, a municipal police department, another police department providing policing services in the Province or the Serious Incident Response Team is a peace officer and has

(a) all the powers, authority, privileges, rights and immunities of a peace officer and constable under the common law, the Criminal Code (Canada) and any other federal or Provincial enactment; and

(b) the power and authority to enforce and to act under every enactment of the Province and any reference in any enactment or in any law, by-law, ordinance or regulation of a municipality to a police officer, peace officer, constable, inspector or any term of similar meaning or import shall be construed to include a reference to a member of the Provincial Police, the Royal Canadian Mounted Police, a municipal police department, another police department providing policing services in the Province or the Serious Incident Response Team.

Section 70:

In Sections 71 to 83, “member of a municipal police department” means a member of a police department appointed pursuant to subsection 37(4) or 38(1) or an amalgamated police department, by

whatever rank or title the person may be designated, who has been sworn in as a peace officer and includes special constables and by-law enforcement officers employed by or appointed at the request of a municipality whose authority as peace officers is limited to duties contained in their appointment.

Section 88:

*(1) The Minister or chief officer with the approval of the Minister may*

*(a) appoint special constables as necessary;*

*(b) define the offices, positions, territorial jurisdiction and duties of special constables, generally or specifically;*

*(c) make rules and regulations governing the qualifications, office, position, duties, conduct and discipline of special constables and any other matter concerning special constables;*

*(d) suspend or revoke the appointment of a special constable*

*(2) Subject to the limitations of the appointment under subsection (1), a special constable is, while discharging the responsibilities and exercising the powers of a special constable, a peace officer.*

*(3) Before the suspension or revocation of the appointment of a special constable, the special constable shall be given reasonable information with respect to the reasons for the suspension or revocation and an opportunity to reply orally or in writing as the Minister or chief officer may determine.*

*(4) The employer of a special constable is responsible for ensuring that the special constable fulfils the duties imposed by this Act and the rules and regulations made pursuant to this Act and exercises the power and authority conferred by this Act and the appointment in a proper manner.*

*(5) The employer of a special constable is liable in respect of a tort committed by the special constable in the performance of the special constable's duties.*

Section 89:

*(1) The council of a municipality that has its own police department pursuant to Section 36 may, with the approval of the Minister or a person designated by the Minister, appoint one or more by-law enforcement officers who have the authority of a peace officer only with respect to the enforcement of the by-laws of the municipality.*

*(2) Where the council of a municipality appoints by-law enforcement officers pursuant to subsection (1), the municipality is liable in respect of a tort committed by the by-law enforcement officer in the performance of the by-law enforcement officer's duties.*

Section 90:

*(1) The appointment of a special constable or by-law enforcement officer pursuant to Section 88 or 89 must be in writing and state clearly the territorial jurisdiction and duties of the special constable or by-law enforcement officer, and the person's authority as a constable or peace officer are only as stated.*

*(2) The territorial jurisdiction of a by-law enforcement officer does not extend beyond the boundaries of the municipality to which the officer is appointed.*

*(3) Every special constable or by-law enforcement officer, before entering upon the person's duties, shall take and subscribe such oath or affirmation as is prescribed by regulation.*

## **7. Police Regulations, NS Reg 230/2005**

Section 1 (v): “special constable” means, except in Section 17A and Form 2A, a special constable appointed under subsection 37(4) of the Act, and for greater certainty does not include a special constable designated under subsection 73(4) or 74(3) of the Act or appointed under clause 41(3)(d) or 88(1)(a) of the Act.

Special constable and by-law enforcement officer qualifications<sup>35</sup>

### Section 7:

*(1) To be a candidate for appointment as a special constable or by-law enforcement officer, a person must be at least 19 years old and must demonstrate all of the following qualifications to the satisfaction of the chief officer:*

- (a) a good character;*
- (b) Canadian citizenship with residence in Canada, or permanent residence as defined by the Immigration and Refugee Protection Act (Canada);*
- (c) the ability to carry out the services required of them as a special constable or by-law enforcement officer;*
- (d) the ability to meet the minimum training standards established by the Minister;*
- (e) any qualifications prescribed by the Minister in addition to those specified in clauses (a) to (d).*

*(2) To be a candidate for appointment as a special constable or by-law enforcement officer, a person must consent to criminal and background checks.*

*(3) A person must not be appointed as a special constable or by-law enforcement officer if criminal and background checks show that the person has been convicted of any criminal offence or has been or is the subject of a disciplinary proceeding in any jurisdiction that, in the opinion of the chief officer, would reasonably be expected to have a negative impact on their acting as a special constable or by-law enforcement officer or on the policing profession generally.*

Section 8: *Each municipality must maintain a record of all of its appointments of special constables and by-law enforcement officers, and must provide the record to the Minister on request.*

### Section 9:

*(1) A municipality that appoints a special constable or by-law enforcement officer must establish policies and procedures specifying the authority, responsibility and duty of the special constable or by-law enforcement officer and must provide the policies and procedures to the Minister in writing, for the Minister’s approval.*

*(2) A municipality must not carry out a policy or procedure established for a special constable or a by-law enforcement officer unless it is approved by the Minister.*

### Section 10:

*(1) Before reappointing a person as a special constable or by-law enforcement officer, the chief officer must evaluate the person’s performance as a special constable or by-law enforcement officer since their appointment or most recent reappointment.*

*(2) A municipality must keep records of all performance evaluations conducted under subsection (1), and must provide the records to the Minister on request.*

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<sup>35</sup> Provisions specific to by-law enforcement officers are not included here as by-law enforcement officers only have authority to enforce by-laws and not provincial offences.

## **8. Public Service Act, RSNS 1989, c 376**

### Section 6:

*A member of the Executive Council may, subject to the approval of the Governor in Council, enter into an agreement with the Government of Canada, the government of a province, the government of a foreign state or subnational unit or an association of foreign states or subnational units, or agency thereof, or with any institution or person, or any of them, providing for a joint undertaking with the Government of Canada, with the government of a province, with the government of a foreign state or subnational unit or with an association of foreign states or subnational units, or any agency thereof, or with any institution or person, or any of them, of any project within the member's mandate under this Act.*

## **Legislation and Regulations provisions that indirectly relate to the use of photo enforcement:**

### **1. Traffic Safety Act, SNS 2018, c 29**

#### Section 15:

*(1) The council of a municipality shall appoint one or more persons as the municipal traffic authority for the municipality.*

*(2) A municipal traffic authority has the power and shall perform the duties and functions of a traffic authority for all or part of the municipality, as specified by the council for the municipality.*

*(3) A municipal traffic authority has jurisdiction over all municipal highways in the municipality or part of the municipality specified by the council, excluding (a) intersections that include a provincial highway; and (b) highways that have been designated by the Minister as main travelled or through highways under this Act, the former Act or the Public Highways Act.*

#### Section 16:

*(1) The council of a municipality may appoint one or more persons as a deputy municipal traffic authority.*

*(2) A deputy municipal traffic authority has the power and shall perform the duties and functions of the municipal traffic authority under this Act if (a) the municipal traffic authority is absent or incapacitated; or (b) the office of the municipal traffic authority is vacant.*

*(3) A deputy municipal traffic authority has the power and shall perform any duties and functions of the municipal traffic authority under this Act that are assigned in writing by the municipal traffic authority to the deputy municipal traffic authority.*

#### Section 23:

*(1) Subject to the regulations, a traffic authority may set a speed limit on a highway under the traffic authority's jurisdiction by placing an official traffic sign that displays the speed limit.*

*(2) The traffic authority may set different speed limits for different classes of vehicles.*

*(3) A traffic authority may not set a speed limit greater than 110 kilometres per hour.*

*(4) Subject to subsection (5), a traffic authority, other than the Provincial Traffic Authority, may not set a speed limit greater than 80 kilometres per hour or less than 50 kilometres per hour without the approval of the Provincial Traffic Authority.*

*(5) A municipal traffic authority may set the speed limit in a school area, park or beach area at less than 50 kilometres per hour without the approval of the Provincial Traffic Authority.*

#### Section 24:

*(1) A traffic authority may, on a highway under the traffic authority's jurisdiction, set a minimum speed at which vehicles and other conveyances on the highway must travel by placing an official traffic sign that displays the minimum rate of speed.*

*(2) The traffic authority may set different minimum rates of speed for different classes of motor vehicles.*

Section 25: *Where an official traffic sign displays a speed limit or minimum speed, the speed limit or minimum speed applies to the part of the highway that lies between the point at which the sign is placed and the next point at which is placed another official traffic sign that*

*(a) displays a different speed limit or minimum speed, as the case may be; or*

*(b) in the case of a minimum speed, indicates that the requirement to drive at the minimum speed ends.*

Section 29: *The exercise of the powers conferred under Sections 20 to 28 by a traffic authority is subject to the regulations.*

Section 277:

*(1) Where a court enters a conviction, sets aside an in-absence conviction or determines an appeal in relation to a charge under this Act, the former Act or a provision of the Criminal Code (Canada) relating to a vehicle or other conveyance, the court shall certify the fact to the Registrar in the form or manner prescribed by the Registrar....*

*(4) Where a person is convicted of an offence under this Act, the former Act or a provision of the Criminal Code (Canada) relating to a vehicle or other conveyance and the person appeals from the decision or applies to have the in-absence conviction set aside, the person may obtain from the court a notice of the determination if the decision is reversed on appeal or the in-absence conviction is set aside.*

## **2. Halifax Regional Municipality Charter, SNS 2008, c 39**

Section 58:

*(1) The Council shall make decisions in the exercise of its powers and duties by resolution, by policy or by by-law.*

*(2) The Council may exercise any of its powers and duties by resolution unless a policy or a by-law is required by an enactment.*

*(3) The Council may exercise by by-law any of the duties and powers that it may exercise by resolution or policy.*

*(4) The Council may exercise by policy any of the duties and powers that it may exercise by resolution.*

*(5) The Council may make and carry out a contract, perform an act, do anything or provide a service for which the Municipality or the Council is authorized by an Act of the Legislature to spend or borrow money*

Section 59:

*(1) Before a policy is passed, amended or repealed the Council shall give at least seven days' notice to all Council members.*

*(2) The Council may adopt different policies for different areas of the Municipality.*

*(3) In addition to matters specified in this Act or another Act of the Legislature, the Council may adopt policies on any matter that the Council considers conducive to the effective management of the Municipality.*

Section 68: *(1) The Council may provide police services in the Municipality by a combination of methods authorized pursuant to the Police Act and the board of police commissioners of the Municipality has*

*jurisdiction over the provision of the police services, notwithstanding that they are provided by a combination of methods.*

Section 75:

*(1) The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide.*

*(2) An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person, including the sale or disposition to that person of property of the Municipality that continues to be required for the purposes of the Municipality.*

Section 79A:

*(1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if*

*(a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;*

*(b) the expenditure is in respect of an emergency under the Emergency Management Act; or*

*(c) the expenditure is legally required to be paid.*

*(2) The Municipality may expend money provided for in an operating budget or capital budget for a purpose other than that set out in the operating budget or capital budget for that fiscal year if the expenditure does not affect the total of the amounts estimated for the operating budget and the capital budget.*

*(3) The Municipality may authorize expenditures from its operating budget or transfer money from the operating budget to its capital budget if the total amount of such expenditures and transfers for the fiscal year does not exceed the total amount of estimated revenue from all sources in excess of the amount estimated for those sources in the operating budget for that fiscal year.*

Section 79B: *The Council shall establish procedures to authorize and verify expenditures that are not included in an operating budget or capital budget*

Section 319:

*(1) The Council may make by-laws for the protection of streets and may limit the by-law to certain streets, or to certain times of the year, or to both.*

*(2) For the purpose of the Motor Vehicle Act, the Council is a local authority.*

Section 321:

*(1) In this Section, "highway" and "Provincial Traffic Authority" have the same meaning as in the Motor Vehicle Act.*

*(2) The Council may, by policy, appoint a traffic authority for all or part of the Municipality.*

*(3) A traffic authority has, within the Municipality, the powers of a traffic authority of a city or town pursuant to the Motor Vehicle Act.*

*(4) The Clerk shall notify the Provincial Traffic Authority of the appointment of a traffic authority.*

*(7) The Provincial Traffic Authority has, with respect to*

*(a) highways vested in Her Majesty in right of the Province;*

*(b) highways in areas of the Municipality for which there is no traffic authority; and*

*(c) highways in the Municipality that have been designated by the Minister of Transportation and Active Transit as main travelled or through highways, the powers conferred upon a traffic authority by or pursuant to the Motor Vehicle Act.*

*(8) The traffic authority for the Municipality has, with respect to highways in the Municipality, excluding those for which the Provincial Traffic Authority has authority, the powers conferred upon a traffic authority by or pursuant to the Motor Vehicle Act.*

Section 334: *A by-law passed pursuant to this Part is not subject to the Motor Vehicle Act.*

Section 364: *Part XVI of the Municipal Government Act applies to the Municipality.*

Section 365: *Part XIX of the Municipal Government Act applies to the Municipality*

Section 366: *Part XX of the Municipal Government Act applies to the Municipality.*

### **3. Municipal Government Act, SNS 1998, c 18**

Section 26: *The council may establish, by policy, citizen advisory committees which shall advise the council, as directed by the council.*

Section 27:

(1) *The council may establish, by policy, a community committee for an area.*

(2) *A policy establishing a community committee shall*

(a) *define the boundaries of the area for which the committee is responsible and set out the duties of the committee; and*

(b) *include such other matters as the council deems advisable.*

(3) *The powers and duties of a community committee may include*

(a) *monitoring the provision of services to the area for which the committee is responsible and recommending the appropriate level of services, areas where additional services are required and ways in which the provision of services can be improved;*

(b) *the establishment of one or more advisory subcommittees;*

(c) *making recommendations to the council respecting any matter intended to improve conditions in the area for which the committee is responsible including, but not limited to, recommendations respecting*

(i) *inadequacies in existing services provided to the area and the manner in which they might be resolved, additional services that might be required and the manner in which the costs of funding these services might be raised,*

(ii) *by-laws or regulations, including those regarding planning, that are required, and*

(iii) *the adoption of policies that would allow the people of the area to participate more effectively in the governance of the area.*

Section 34:

(1) *The council may adopt a policy for the management and destruction of records.*

(2) *Records that are required by an enactment to be kept and minutes, by-laws, policies and resolutions of the council shall not be destroyed.*

(3) *The council may, by policy, specify further classes of records that are not to be destroyed or that are to be kept for specified time periods.*

Section 183:

(1) A

(a) *penalty;*

(b) *licence fee,*

*imposed pursuant to this Act may, unless otherwise provided, be recovered and enforced with costs on summary conviction.*

(2) *A penalty for a contravention of this Act or a by-law of the municipality made pursuant to this Act or another Act of the Legislature shall, when collected, be paid to the municipality.*

(3) *A penalty or fine pursuant to a by-law of the municipality, unless otherwise provided, belongs to, and forms part of, the general revenue of the municipality.*

Part XX: Sets out a regime governing the Freedom of Information and Protection of Privacy. As noted, HRM is bound by these provisions which include the collection, use and disclosure of personal information. The provisions are too lengthy to be set out in this section.

#### **4. Costs and Fees Act, RSNS 1989, c 104**

##### Section 2:

*(1) The Governor in Council may determine, by regulation, fees and allowances for the departments, officials or persons set out below in respect of services provided by those departments, officials or persons, except party and party costs, or in respect of other related services or any combination of services:*

- (a) departments;*
- (b) Supreme Court of Nova Scotia and Nova Scotia Court of Appeal;*
- (f) fees to be taken under the Summary Proceedings Act;*
- (g) fees to be taken by an administrative justice of the peace;*
- (h) constables' fees before justices of the peace under the Collection Act and the Summary Proceedings Act;*

*(1A) The Governor in Council may make regulations respecting the waiver or reduction of any fee or allowance otherwise payable pursuant to subsection (1) or the regulations, including, without restricting the generality of the foregoing, regulations prescribing the circumstances under which the fee or allowance may be waived and designating a person or a class of persons who may waive or reduce the fee or allowance.*

Section 5: *The fees taken at any of the departments of the Government shall be paid into the Consolidated Fund of the Province and shall be accounted for in the annual account of such department.*

Section 21: *(1) Notwithstanding anything contained in this Act, the Governor in Council may*

- (a) prescribe fees and allowances for the purpose of this Act and change the fees and allowances;*
- (aa) prescribe the forms to be used under this Act;*
- (b) authorize a person to determine the fees and allowances or the circumstances in which additional fees and allowances shall be paid;*
- (c) determine the responsibility for payment of new or additional fees and allowances.*

##### Section 24:

*(1) A witness or prosecutor shall be entitled to the payment of his fees and allowances when they are certified to be correct*

- (a) by the prosecuting officer, if any, and by the judge of the provincial court or justice of the peace in the case of which he has cognizance, whether there is such prosecuting officer or not; or*
- (b) by the prosecuting officer and the clerk of the Crown, or clerk of the court, in a case before the Supreme Court or a county court judge's criminal court.*

#### **5. Fees and Allowances Under Part I and II of the Act, NS Reg 91/2009**

Section 7: *Fees to be taken under the Summary Proceedings Act*

*For a Judge of the Provincial Court*

- (9) For hearing and determining case.....\$3.00*
- (10) If case lasts over two hours.....\$2.00*

Section 7A: *Fees to be taken by an Administrative Justice of the Peace*

- (1) For administering oath.....\$15.00*
- (2) For swearing information.....\$15.00*
- (3) For issuing summons.....\$15.00*
- (4) For issuing subpoena.....\$15.00*

## **6. Freedom of Information and Protection of Privacy Act, SNS 1993, c 5**

This statute sets out provisions related to requests for information, exemptions, including law enforcement, from disclosing information as well as provisions related to the protection of privacy. Nova Scotia's Information and Privacy Commissioner, amongst other responsibilities, investigates privacy complaints and privacy breaches and also comments on the privacy and access implications of proposed legislation, programs, policies and technologies.

As HRM is governed, in relation to privacy and related issues, by Part XX of the Municipal Government Act, as noted above, and will complete a Privacy Impact Assessment, no provisions are included here.

## **7. Remission of Penalties Act, RSNS 1989, c 397**

Section 2: *Where a pecuniary penalty or forfeiture is imposed by any Act of this Province, the court or judge or justice of the peace having cognizance of the proceedings may at any time after the commencement thereof, remit in whole or in part, any sum of money by such Act imposed as a penalty or forfeiture on a convicted offender, and may do so whether the money is in whole or in part payable to the Crown, or to some person other than the Crown, and whether the same is recoverable by indictment, information, summary process, action or otherwise.*

## **8. Provincial Court Act, RSNS 1989, c 238**

Section 15: *(1) The Chief Judge is responsible for the administration of the judicial functions of the court, including, without limiting the generality of the foregoing, the scheduling of the sittings of the court and the assignment of judicial duties.*

Section 18:

*(1) The Attorney General may designate or appoint a person in the public service to be the administrator of the court.*

*(2) The administrator shall perform the duties prescribed in the regulations.*

## **9. Duties of the Chief Judge and Administrator of the Provincial Court**

### **Regulations, NS Reg 250/83**

Duties of the Administrator of the Provincial Court: *The Administrator of the Court shall have the power and authority to attend upon all non-judicial matters in respect to the office of a judge of the Provincial Magistrate's Court and the Court of the Provincial Magistrate [Provincial Court], including but not limiting the generality of the foregoing:*

*3 direct the implementation of administrative procedures and practices required to satisfy the management and policy directives of the Attorney General or the Auditor General and insure the safe-keeping and proper accounting of all moneys received and disbursed and process issued out of the Provincial Magistrate's Court;*

*4 direct the support staff to make such statistical returns as the Attorney General may require and provide for the safe-keeping, inspection and maintenance of books, documents and papers;*

*5 in consultation with the Chief Judge, prepare the annual estimates in respect to the Provincial Magistrate's Court and the judges thereof and attend upon all necessary financial accounting in respect thereto;*

*6 implement procedures and issue such directives and take such action as required concerning the collection and accounting of all fines, penalties, fees and court costs payable or ordered by the Court;*

7 in consultation with the Chief Judge, attend upon all matters relating to providing the place or places where and when the Provincial Magistrate's Court shall sit; the use of the courtroom, town hall, council chamber or other premises, so as not to interfere with the use of such premises by others for purposes for which the same are maintained;

8 communicate to the Chief Judge such matters of an administrative nature in respect to the Provincial Magistrate's Court as he shall request;

9 determine and make recommendations to the Attorney General on the following matters:

- (a) all support staff requirements and replacement thereof,
- (b) courts, judges' offices and staff space, furniture and equipment required,
- (c) the designation of limited powers to be exercised by Justices of the Peace and the appointment of additional Justices of the Peace;

10 attend upon such non-judicial matters in respect to the Provincial Magistrate's Court as may be directed by the Attorney General or his Deputy.

## **10. Night Courts Act, RSNS 1989, c 310**

Section 2: In this Act,

- (a) "Attorney General" means the Attorney General of Nova Scotia;
- (b) "district" means an area of the Province designated by the Attorney General pursuant to Section 3;
- (c) "judge" means a judge of the provincial court or a justice of the peace;
- (e) "night court" means a court held by a judge between the hours of five o'clock and eleven o'clock in the afternoon.

Section 3:

(1) The Attorney General may by order divide the Province into two or more territorial units and designate any unit as a district for the purpose of this Act.

(2) The Attorney General may by order direct a judge to hold a night court in a district at a place within the district and at the time determined by the Attorney General.

Section 4: (1) Where a judge has been directed to hold a night court pursuant to subsection (2) of Section 3, he shall place or cause to be placed on the docket for the night court any criminal or penal matter or civil matter within his jurisdiction

- (a) in which one of the parties has indicated a preference for proceeding with the matter at night court; and
- (b) which the judge considers can be conveniently proceeded with at night court.

## **11. Justices of the Peace Act, RSNS 1989, c 244**

This legislation covers issues that one might expect including appointments, categories of justices of the peace, complaints, removal and compensation. It authorizes the Justices of the Peace Regulations.

## **12. Justices of the Peace Regulations**

Section 4:

A staff justice of the peace may only

- (a) swear an information;
- (b) issue a summons;
- (c) issue a subpoena;

- (e) conduct an arraignment and accept a not guilty plea in respect of an offence under a Provincial enactment;*
- (ea) conduct an arraignment and accept a guilty plea in respect of an offence under a Provincial enactment and impose*
  - (i) the minimum penalty authorized by law for the offence and any charge required under subsection 8(6) of the Summary Proceedings Act, or*
  - (ii) the penalty for that offence that has been directed by the Attorney General for out of court settlement under subsection 8(6) of the Summary Proceedings Act, including any charge required under that subsection; or*
- (eb) in respect of an offence under a Provincial enactment for which a summary offence ticket has been issued,*
  - (i) enter a conviction and impose a penalty and any applicable charge in accordance with subsection 8(15) of the Summary Proceedings Act, including an increased penalty in accordance with subsection 8(15A) of the Summary Proceedings Act, or*
  - (ii) quash a proceeding in accordance with subsection 8(15) of the Summary Proceedings Act;*
- (ec) sign a certificate striking out a conviction under subsection 8(17A) of the Summary Proceedings Act;*
- (g) administer an oath;*
- (i) when exercising the authority of a judge in the absence of the judge, adjourn a matter before a court;*

Section 5:

*(1) Except as provided in Section 5A, an administrative justice of the peace may only*

- (b) administer an oath;*
- (c) swear an information;*
- (d) issue a summons; and*
- (e) issue a subpoena.*

*(2) The fees for the services referred to in clauses (1)(b), (c), (d) and (e) shall be as set out in the Schedule to Part I of the Costs and Fees Act.*

Section 7:

*(1) A presiding justice of the peace may, subject to the Act and in accordance with the directions of the Chief Judge of the Provincial Court, the Chief Judge of the Family Court or the Chief Justice of the Supreme Court of Nova Scotia, as the case may be,*

- (a) deal with all matters prescribed to a justice of the peace in the Criminal Code and the Summary Proceedings Act;*
- (b) swear an information;*
- (c) issue a summons;*
- (d) issue a subpoena;*
- (l) conduct an arraignment in respect of an offence charged in a summary offence ticket;*
- (m) preside over a trial in respect of an offence charged in a summary offence ticket;*
- (p) hear an application to strike out a conviction under subsection 8(18) of the Summary Proceedings Act;*
- (q) preside over a trial in respect of a provincial enactment;*

*(2) A presiding justice of the peace may perform any of the duties listed in subsection (1) between the hours of 9 p.m. of one day and 9 a.m. of the following day only when, in the opinion of the presiding justice of the peace, it is not reasonable to wait until 9 a.m. of the next day to deal with the matter.*

### **13. Youth Justice Act, SNS 2001, c 38**

#### Section 13A:

*(1) Subject to subsection (2), this Act has no application where a young person who is sixteen or seventeen years of age is charged with an offence under the Motor Vehicle Act or any other motor vehicle related offence designated in the regulations.*

*(2) The Governor in Council may, by regulation, require that certain provisions of this Act apply to young persons charged with those offences described in subsection (1).*

### **14. Youth Justice Regulations, NS Reg 191/2003**

Section 3: *For the purposes of subsection 32(1) of the Youth Justice Act, records concerning an offence by a young person may be disclosed to any of the following:*

*(d) the Registrar of Motor Vehicles, for the purpose of recording in the Registry of Motor Vehicles the name and offence of any young person who is found guilty of a motor vehicle-related offence.*

*(g) a person employed by a municipality whose duties include the collection of money paid in fines or the collection of statistical data, for the purpose of the collection of the fines or statistical data;*