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ONTARIO COURT OF JUSTICE
(Central East Region)

B E T W E E N:	)	
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Her Majesty The Queen	)	**T. Armstrong, Provincial Prosecutor**
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- and -	)	
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HAILIANG XU	)	**Peter Sutton, Agent for the Defendant**
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	)	**HEARD:**

JUDGMENT ON APPEAL

BELLEFONTAINE, J:

[1] These are my reasons for judgment on the appeal brought by Mr. Hailiang Xu from his conviction for speeding.

[2] The issue is whether it is necessary for the Crown to strictly prove that the police officer who operated the laser speed measuring device was qualified to do so and whether the required level of qualification was proven in this case.

[3] The evidence at trial relating to the testing of the machine and the officer's qualifications to do so was as follows:

> "Q. Okay. And what type of speed measuring device were you using?
> A. An UltraLyte LR LIT [sic]20-20.
> Q. And how do you know how to use such a device?
> A. I've been trained on such.
> Q. And how do you know if the device was working properly?
> A. I tested the device before and the end of my shift.
> Q. Approximately what time would before your shift and end of shift?
> A. My shift that day was 8:00 a.m. till 6:00 p.m.
> Q. And do you have that in your notes that you tested the device?
> A. I do.
> Q. Thank you. And what were the results of the tests?
> A. That it passed.
> Q. And you tested the device in accordance with what?
> A. The manufacturer's specifications.
> Q. And what is the purpose of such a device?
> A. To accurately measure the speed of a motor vehicle.
> Q. Now the reading that you obtained from the device of 63, how did that compare, sir, with your visual observations or estimate regarding the speed of the vehicle?
> A. As such.
> Q. Pardon me?
> A. As such. He – it was travelling faster than the posted 40 kilometres an hour limit."

And further, in cross-examination:

> "Q. Okay. I believe you also indicated you had tested it according to the manufacturer's specifications. Is that correct?
> A. That's correct.
> Q. And to determine those manufacturer's specifications, were you provided something by the manufacturer to determine that you were actually following the manufacturer's specifications?

A. Yes. In training we had trained to do five different tests with the device and if it passes those, then its operable ready to use on the road.
Q. Okay. So it would be fair to say you were provided with a manual?
A. No.
Q. Have you ever read the manual for this specific device?
A. Have I – no, I have not.
MR. SUTTON: Okay. Those are my questions. Thank you."

And in re-examination:

Q: Sir, the training that you said – you were told that in training you were told five tests and, if they passed, the device is operable for use. Is that right?
A. That's correct, yep.
Q. And, to your knowledge, sir, are those five tests the manufacturer's recommended tests?
A. They are.
Q. Is that what you were told they were?
A. That's right. That's when I was trained."

During argument, the defence took the position that it was insufficient for the officer to be trained on the machine and that there must be evidence that he had passed his training and been formally qualified to operate the device by some type of certification process or test. It was also submitted that in the absence of having personally read the manufacturer's manual, the officer is not in a position to say that he operated the device in accordance with the manufacturer's specifications. In his decision, the Justice of the Peace noted the officer's evidence that the vehicle was observably driving at a speed higher than the posted speed and continued later:

"The officer stated that he tested the device prior to and at the end of his shift, that he had been trained in operation and he tested the device according to the manufacturer's specifications….
In the opinion of the Court, the officer's observation was confirmed and, though the officer did not state that he was qualified, the Court is satisfied

> that the officer is well qualified to use that device, primarily to confirm his observation which was that the vehicle was driving at a higher rate of speed than as compared to the speed posted.
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> When the Court applies the three state R. v. W.(D.) test, there is no doubt in the mind of the Court that the defendant was driving at the speed the officer testified to being 63 kilometers per hour in a 40 kilometre per hour zone."

The defence relies on the decision of Justice F.L. Forsyth in ***R.*** v. ***Guglietti*** [2004] O.J. No. 6218. In oral reasons Justice Forsyth held that the prosecution evidence must go beyond establishing the officer had received training on the device to establish the officer was additionally qualified to operate the device:

> "25. Now in conclusion, I find that training and qualification are not interchangeable with respect to the specific example of a qualified radar operator as a police officer. I find that Mr. Justice Bellefontaine has arrived at the same conclusion by his constant use of the terms "training" and "qualifications" in his rationale in the ***He*** case.
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> 26. I also find that common sense suggests, as Mr. Alexiu submitted, that a person could receive training in anything without necessarily become qualified. It seems trite to say that a person could receive training and fail a test of qualification. A person could receive training and not yet arrive at the point of qualification. A person could receive training and simply cease training before qualification. The point I am making is that these two concepts, in my view, cannot be simply interchangeably used as Justice of the Peace Bonas did…"

Justice Forsyth had relied in part on my brief oral decision in ***R***. v. ***He*** [2003] O.J. No. 2254. Leave to appeal to the Court of Appeal was refused by Justice Armstrong [2003] O.J. No. 2257. In ***He*** the evidence showed the officer to have no training on the particular device used to support the conviction but the

officer did have training on a similar unit and was experienced in the use of radar devices generally. I held:

> "And with respect to the more substantive issue, which is the qualifications of the officer, and I certainly accept what appears to be the thread of the case law, that in order for the Crown to be successful in a case such as this there must be evidence to establish beyond a reasonable doubt that the officer was trained and qualified in the operation of the machine. …
>
> In my view, it then becomes a factual issue for the presiding Justice of the Peace to determine whether or not any given individual officer is, in fact, trained and qualified. In doing so, the training and qualification can be done in a number of ways, that is by education, training, that is on-the-job training, as opposed to any academic training and by experience. There was evidence before Her Worship that this individual had received on-the-job training, that is the one day training session in which she found to be a similar unit and also that he was an experienced officer in the use of these machines, having used not only the machine that was being used on this particular occasions but two other machines of different descriptions over the course of his – from the time of this two or three years of experience. In my view, there was factual foundation upon which it was open to Her Worship to find as she did, specifically factually find, that the officer was a trained and qualified officer."

Justice Forsyth found support for his position that an officer must be trained and additionally qualified in the use of the conjunctive "and" in the frequent use of the term "trained and qualified."

ANALYSIS:

It is important to note at the outset that the qualifications of the officer are not an essential element of the offence that need be proven. Proof of speeding can be proven in many ways, some of which will require no qualifications by an

officer. See ***R.*** v. ***Williams*** [2008] O.J. No. 1078. Indeed the offence can be proven on the basis of civilian witnesses who will have no training or qualifications or experience. See ***R.*** v. ***Graat*** 2 C.C.C (3d) 365 (S.C.R.). Accordingly, as I attempted to convey in ***R.*** v. ***He,*** the matter becomes a factual one. It will be up to the presiding Justice in any case to decide whether the Court is satisfied beyond a reasonable doubt that a certain level of speed has been proved or whether a reasonable doubt exists on the issue. The point is more clearly expressed by Justice Pockele in ***R.***v. ***Williams*** [2008] O.J. No. 1078:

> "5. It is not an essential element of the offence that the officer who observed a speeding offence and wrote the ticket be "qualified" in any particular manner according to Ontario law; however it would appear that in the Alberta, ***R.*** v. ***Werenko***, the Crown is required to prove that the operator of a speed detection device is qualified by virtue of (i) following a course, (ii) passing an exam successfully, (iii) having several months of required experience. It would appear that the issue of being "qualified" in Ontario must be proven beyond a reasonable doubt on a standard less defined than it is in Alberta.
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> 6. However, a "reasonable doubt" might be raised regarding the accuracy of a speed measurement where an operator is not qualified or has no experience or has no training in the operation of a speed measurement device or system. Similarly, where a mechanical speed detection device is utilized, the prosecution may wish to call evidence, although it is not necessary to do so, that the device has been properly maintained and tested prior to operation. Certainly, these questions would be asked by the defence if not explored by the prosecution, the defence attempting to raise a "reasonable doubt" as to the accuracy of the rate of speed indicated.
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> 7. There is no requirement in the ***Highway Traffic Act*** that the operator of a speed detection device achieves a certain level of qualification as a prerequisite to accepting the operators evidence of rate of speed; the fact that an operator received no training whatsoever, or received training deemed appropriate by his superiors, this may be qualification, or was relatively in

> experienced although properly trained and qualified, are all factors which the Judge or Justice of the Peace can take into consideration when weighing the evidence to establish whether the rate of speed has been established beyond a reasonable doubt or whether the defence has raised a reasonable doubt. It is important to remember that the weighing or assessing of the evidence must not be done on a piecemeal basis and must only be done having regard to all of the evidence before the Court. This is ***R.*** v. ***Morin***, [1992] 3 S.C.R. 286, in Supreme Court. It is also important to remember that contradictory evidence is one of the most important factors to consider in weighing evidence." See ***R.*** v. ***Graat.***

In considering the level and nature of qualifications required of an officer, it is important to be mindful that the ***Highway Traffic Act*** does not provide for particular devices to be used to determine speed and does not require any training, experience or qualifications for a witness's evidence to be admissible. Further, although Quebec and Alberta appear to have judicially mandated requirements for the evidence of speed-measuring devices to be admissible, the appellate courts in Ontario have not imposed any such requirements. For example, in ***R.*** v. ***Vancrey*** [2000] O.J. No. 3033 our Court of Appeal refers to the Quebec Court of Appeal decision in ***D'Astous*** v. ***Bai-Comeau*** [1992] 74 C.C.C. (3d) 73 which set out a number of pre-conditions to the admissibility of radar speed device readings including that the operator had followed a course, had passed an exam and had several months experience. But our Court did not adopt those as pre-conditions to admissibility of the readings in that case.

In the early Court of Appeal decision in ***R.*** v. ***Grainger*** 120 C.C.C. (3d) 321 (1958) it is clear that the officer had no special expertise with respect to the machine and no formal training on its use and consequently no formal "qualification". He had spent two weeks as an observer to familiarize himself with

the use of the machine and was satisfied he operated it properly and that it provided accurate readings. The Court of Appeal held it was open to the trial court to convict on the basis of that evidence as "the only question was the weight of the evidence."

Regina v. ***He*** is itself of significance. It is clear that the officer had a complete absence of qualifications in the sense of some formal certification or approvals for him to operate the specific machine involved. His only qualification was a qualification accepted by the court that by virtue of his experience with similar devices he was functionally able to properly operate the machine. The absence of any formal qualification was not a bar to admissibility of the evidence but left as a matter of weight for the trier of fact to evaluate.

While a police officer's evidence with respect to speed based on a lazer device is superficially a factual relaying of what the device told him or her, implicit in the evidence is that the device is suitable for the purpose, was functioning properly, and was operated properly by the officer. I accept the view of the authors of the Law of Traffic Offences (Carswell) Third Edition, that the evidence coming from the police officer who operated the specialized equipment used to detect speeding vehicles is expert testimony. I can see no reason in principle or authority for holding the admissibility of the evidence of officers operating speed-reading devices to a higher standard than that for other expert evidence. The test for admissibility is set out in ***R***. v. ***Marquard*** (1993) 85 C.C.C. (3d) 193 at 224:

> The only requirement for the admission of expert opinion is that the "expert witness possesses special knowledge and experience going beyond that of the trier of fact": ***R.*** v. ***Beland***, [1987] 2 S.C.R. 398, at p.415. Deficiencies

in the expertise go to weight, not to admissibility. As stated by Sopinka, Lederman and Bryant, The Law of Evidence in Canada (1992):

> The admissibility of such [expert] evidence does not depend upon the means by which that skill was acquired. As long as the court is satisfied that the witness is sufficiently experienced in the subject-matter at issue, the court will not be concerned with whether his or her skill was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence."

The law has long-recognized that experience alone will be a sufficient basis for allowing an individual to be qualified as an expert witness to give opinion evidence. See ***R. v. Dugandzic*** [1981] O.J. No. 1, in which the Court of Appeal overturned a trial Judges ruling that a chemistry degree was required to identify a still. The Court of Appeal held the Judge was in error to refuse to qualify the officer as an expert and that his evidence should have been accepted subject to the right of defence counsel to argue that the opinion should not be given substantial weight. Non academic experts will rarely have any formal certification. Outside of a regulated academic training environment the concept of formal certification or qualification becomes very ethereal. Given the lack of statutory requirements for any training or certification, and accordingly who should do it, the level of rigour established for the certification or formal qualification could be so variable as to be meaningless. I consider it to be in error to require any formal certification or qualification as a pre-condition to accepting the evidence of an officer respecting the results of a speed measuring device. The term "qualification" as used in ***R. v. He*** should be interpreted in the expert evidence context as a qualification by the trial Justice in determining whether the witness possesses special knowledge and

experience going beyond that of the trier of fact and admitting it as expert evidence.

Accordingly, I find the approach that was taken by Justice Pockele in ***R.*** v. ***Williams*** to be preferable to the approach taken by Justice Forsyth in ***R.*** v. ***Guglietti*** and decline to follow ***R.*** v. ***Guglietti***.

In the case before me of Mr. Xu, there was a factual basis on which it was open to the Justice of the Peace to find that the officer had sufficient training on the device to know if it was working properly and operated properly. The officer indicated that he had been trained on the device and that he had tested the device before and at the end of his shift in accordance with the manufacturer's specifications. He had been trained to do five different tests with the device and if it passed those then it was operable, ready to use on the road. There is nothing specific by way of cross-examination or contrary evidence to undermine the officer's evidence as to the proper functioning of the machine.

The defence have submitted that a reasonable doubt should have been raised with respect to the officer's ability to operate the machine and the functioning of the machine on the basis that the officer had been trained by other officers whose qualifications are unknown and he had not personally read the manual for the machine that he used. They rely on ***R.*** v. ***Wilkins*** [2006] O.J. No. 5366 a decision of Justice Klein. In ***Wilkins*** the officer had been trained on a photocopy of a manual for the lazer device supplied by the Ministry of Transportation. Justice Klein held that in the absence of evidence that the training materials had been

supplied by the manufacturer, compliance with the manufacturer's operating requirements could not be proven beyond a reasonable doubt. In my view, the conclusion of fact in that case cannot be extended to a proposition of law that training with original manufacturer's materials is required to establish guilt beyond a reasonable doubt. An expert is entitled to rely on hearsay evidence in the course of coming to their opinion, and they often rely on secondary materials to develop their expertise. See ***Reference Re Criminal Code of Canada***, [1971] N.B.J. No. 31, (N.B.C.A.) Indeed, as previously noted, there is in law no requirement for any particular training to be had at all, experience alone, which may well not involve direct contact with the manufacturers materials, may be found to be sufficient to satisfy the Court with respect to the operator's expertise. It was in my view open to the Justice of the Peace at trial to not consider ***R.*** v. ***Wilkins*** to establish any proposition of law that was binding on him and to make a finding of guilt on the basis of the evidence that was before him.

The defence have further submitted on the basis of ***Regina*** v. ***Niewiadomski*** [2004] O.J. No. 478, that the Crown is obligated to prove that the individuals who trained the officer were qualified to do so. In ***Niewiadomski*** there were a great number of defects established in the evidence with respect to the officer's operation of the laser device. I do not consider Justice Schnall's brief conclusion that the cross-examination of the police officer should have raised a reasonable doubt in the mind of the Justice of the Peace to impose a requirement that each of the listed defects be negatived by the Crown in future cases. The large number of admitted operating defects inferentially called into question the officer's qualifications and training for him to be able to determine whether or not the device was in proper working order. I do not consider the decision to impose a

requirement that the training officers have a particular level of qualifications in order to properly train the officer in the use of the equipment. As stated by the Supreme Court of Canada in ***R.*** v. ***Marquard*** deficiencies in the expertise go to weight and not the admissibility of the expert opinion evidence. This proposition would apply equally to the qualifications of the individual who trained the officer. The quality of an officers training may, not must, raise a reasonable doubt.

There is another related line of authority from our Court of Appeal, which is inconsistent with requiring an officer be qualified in the sense of having some formal certification or approval as a pre-condition of him being able to testify to the results of the laser device. In ***Regina*** v. ***Bland***, our Court of Appeal relied on ***Nicholas*** v. ***Penny*** where the evidence of the testing of the speedometer was found to have been inadmissible, but the Court held unanimously that no evidence was required as to the accuracy of the speedometer in order to establish a ***prima facie*** case, but that the evidence might be shaken on cross-examination or by contrary evidence as to the speed.

Our Court of Appeal noted in particular the comments of Lord Goddard who held if evidence is given, that a mechanical device such as a watch or speedometer recorded a particular time or a particular speed, which is the purpose of that instrument to record, that can by itself be ***prima facie*** evidence on which a Court can act of that time or speed. They further noted that where a very small period of time (and by implication a small difference of speed) was involved, the Court might well require evidence as to the accuracy to the clock in question. The Court of Appeal went on to state:

> "I find the reasoning of the Court in ***Nicholas*** v. ***Penny*** highly persuasive and I am prepared to follow it. In short I would hold where

> evidence is given that over a measured level of distance, the speedometer recorded steadily at 95 miles per hour, this is ***prima facie*** evidence that the offence of driving at 90 miles per hour was committed, in the absence of some evidence, elicited either on cross-examination or by defence witnesses which would suggest that the speedometer on the police vehicle was inaccurate."

By analogy a laser speed-reading device is a device that is specifically designed for the purpose of determining speed and the results of it should be admissible as prima facie evidence, subject to any evidence that might be shaken on cross-examination or by contrary evidence as to the speed. Rulers, stop-watches and speedometers are arguably simple and common devices which, a Court can take judicial notice of, are reliable and within the common knowledge of the community to know how to use properly. Courts have repeatedly held that judicial notice can be taken of the ability of laser devices to reliably measure the speed of motor vehicles. See ***R. Le*** [2002] O.J. No. 894 and ***R. v. Hawkshaw*** [2006] O.J. No. 5419. I do not consider however, that judicial notice can yet be taken of the proper operation of a laser speed measuring device. Notwithstanding that given the device's purpose-built nature, and the common nature of other laser measuring devices in local hardware stores, judicial scrutiny of the admissibility of this evidence should reflect the now common usage and accepted reliability of laser technology and some evidentiary presumption that the machine will reliably do what it was designed to do, which is to accurately measure the speed of the identified vehicle.

I consider there to be an underlying flaw in the defence argument before me. The submission is that because the presence or absence of some evidence in one case raised a reasonable doubt the Crown is required to prove or negative that

evidence as an essential element of the offence in every case or that such evidence must raise a reasonable doubt in every case. This is an error. Findings of fact are individual to each trial Judge or Justice on the basis of the evidence before the court. It is not open to the defence to avoid any probative cross examination and call no evidence to rebut a prima facie case and argue at trial, or on appeal, that evidence that was before another court must raise a reasonable doubt. So, in this case, the argument that because the officer has not personally read the device manual, the Court can not be sure he operated it properly, does not gain strength by pointing to other cases where proven significant operating errors were present and the officer had not read the manual. The absence of the known errors in our case makes it a very different case factually such that the absence of having read the manual alone is not probative of the officer's inability to operate the device. In our case the un-contradicted evidence is that the manufacturer's tests were performed.

In this regard I must respectfully disagree with Justice Hourigan in ***R. v. Kologi,*** [2009] O.J. No. 5742 that compliance with the manufacturers requirements for enforcement are an essential element of the offence. In coming to this conclusion she relied in part on the decision of Justice Schnall in ***Niewiadomski***, who held:

"It can be assumed that the absence of full compliance with the testing and operational process should make the reading suspect. There would be no reason for the device manufacturer to set out specifications and directions if it mattered not whether these were complied with."

I view such a holding to be speculative in the absence of evidence as to the role or function the operational processes perform. I consider departures from the manufacturers process to bear on the weight of the evidence and not it's

admissibility. Departures may, not must, raise a reasonable doubt. Many requirements may have no effect whatever on the reliability of the machine but only represent evidentiary safeguards to bolster the weight of the evidence in court. So for example many cases have commented on a manufacturer's requirement that the officer visually observe the vehicle to be speeding before confirming his estimate with the device. This requirement will have no effect whatever on the functioning or reliability of the machine but serves solely to enhance the weight to be accorded to the result which is ultimately for the Justice to decide on the basis of all of the evidence. If the only purpose of such a requirement is to ensure the right vehicle is being targeted, the absence of any other moving vehicles or objects may make the absence of such a requirement immaterial in the context of all of the evidence at the trial. I consider it important to distinguish between requirements that directly impact the reliability of the device from requirements that solely confirm the reliability of the device. Departures from the latter may be less likely to raise a reasonable doubt than departures from the former. Indeed there may be as in ***R. v. Bland*** completely extraneous evidence of reliability that makes the results compelling despite a complete absence of the manufacturers confirmatory testing. To explain the point using the example of the old Borkenstien Breathalizer, a number of operational processes conducted by the operator directly affected the outcome of the test. Previous alcohol laden air had to be purged from the machine and the device recalibrated each use to adjust for the declining strength of its testing solution. A departure from these operating processes would directly impact on the accuracy of the result of the test and would easily raise a reasonable doubt. The operator was also required to test a blank room air sample which would have zero alcohol in it to ensure the machine registered zero and test a sample of known

alcohol content to ensure that a comparable reading was obtained by the machine. These operational requirements do not directly affect the accuracy of the result on the machine but solely confirm that the machine is otherwise accurate. The absence of one of these tests could be seen as less likely to raise a reasonable doubt about the accuracy of the machine. The absence of specific manufacturer's process's in my view should be more nuanced and considered in the context of the extent to which they impact on the accuracy of the machine. It may be that some laser devices can be established in evidence to be so reliable over long periods of time and require so little operator input that the manufacturer's tests are redundant vestiges of an age unfamiliar with the unproven technology.

I consider the approach of Justice Klien in ***R.v. Volfson*** [2009] ONCJ 227 to be correct:

> DID THE FINDING BY THE JUSTICE OF THE PEACE THAT PC SYDNEY FAILED TO OPERATE THE RADAR UNIT IN ACCORDANCE WITH MANUFACTURER'S INSTRUCTIONS AMOUNT TO A PALPABLE OR OVERRIDING ERROR?
>
> **16** It is clear from the brief reasons for decision that were orally delivered by the trial Justice of the Peace that she felt that the law required her to dismiss the charge because PC Sydney had failed to follow to the letter the manufacturer's instructions for the operation of the Genesis II Radar Unit.
>
> **17** By using the word shall in section 9.2 of the manual the manufacturer would seem to be mandating that a road test be conducted at the "start and conclusion of his or her tour of duty" to "confirm the correlation that exists between the patrol vehicle speedometer and the patrol speed displayed on the radar unit." Assuming for a moment that it is indeed mandatory, does it make sense to be so?
>
> **18** Manufacturer's directions are not statutory requirements and should not be elevated to that status. They are not written for that purpose nor have they been adopted as such.
>
> **19** Reducing the requirement that all tests be performed at "start and conclusion of [the] tour of duty" has no purpose, other than to ensure that the first stop of the day based on the device is as a result of accurate and reliable evidence gathered by using that device.
>
> **20** Courts should look to the practical effect of the requirements set out by the manufacturer. Practically they operate as a scheme or a checklist to ensure the accuracy and reliability of the radar device. They are meant to be complied with as part of this scheme or checklist. Slavish adherence to these directions is not required if it does not

practically affect the accuracy or reliability of the results obtained' by the radar device. To hold otherwise could and would result in absurd findings.

21 For example, if the police officer does not complete the required testing of the device at or around the beginning of his or her tour of duty is he or she then precluded from using that radar device for the entire 12 hour period of his or her shift?

22 Despite the use of the word "shall" in section 9.2 of the manufacturer's manual requires the operator to "conduct a road test at the start and conclusion of his or her tour of duty" it is clear that the sole purpose of this road test is to "confirm the correlation that exists between the patrol vehicle speedometer and the patrol speed displayed on the radar unit."

23 It goes on to advise as follows: "Generally, the correlation will be the same for both units and seldom beyond three kilometres an hour. The difference, if present, is reflective of the underestimation of the speedometer in the police vehicle and not an indication of an inaccuracy with the radar unit."

24 This is a clear indication by the manufacturer that they consider their unit to be the more accurate of the two measurements taken at the road test ie. the radar unit and the police vehicle's speedometer.

25 At some level it also begs the question of what is the purpose of the "road test" if the radar unit's "patrol speed" is deemed by the manufacturer to be accurate no matter what the cor-elation might be to the police vehicle's speedometer.

26 In reaching this conclusion I am well aware that I am in respectful disagreement with my sister Justice Schnall's conclusion in R. v. Niewiadomski [2004] O.J. No. 478 at paragraph 29:

> • There would be no reason for the device manufacturer to set out the specifications and directions if it mattered not whether they were complied with.

Simply put, there are times when it mattered not and this is one of them when examined in a purposeful and practical fashion

In conclusion, while it would in my view have been open to the Justice of the Peace to have a reasonable doubt on the evidence in this trial, I'm not prepared to find that he made any palpable and overriding error in coming to the factual conclusion he did, or that there has been any miscarriage of justice in the result. There was no contradictory evidence brought forward by the accused, who was not

present for his trial, to rebut the ***prima facie*** case put in evidence by the prosecution.

Accordingly, the appeal in this matter will be dismissed.

P.L. Bellefontaine
Justice