

DISCUSSION POINTS

July 04, 2007

BACKGROUND re: street racing:

- section 21 of the Bill amends the *Highway Traffic Act* (HTA) to increase the scope of the existing offence of “racing” to include “stunts” and “contests”, and increases the penalties for such violations
- other amendments directed at street racing allow a police officer who believes a person is driving, or has driven, a motor vehicle on a highway in a “race”, “stunt” or “contest”, to suspend that person’s drivers licence for 7 days and impound the vehicle for 7 days
- there is no right of appeal to either the suspension of the drivers licence or the vehicle impoundment, on any grounds
- the Bill prohibits the operation of a motor vehicle equipped with specified performance enhancing equipment ie: operable nitrous oxide injection system
- allows for the creation of regulations that will allow any or all of the *Highway Traffic Act* to apply to the off-highway operation of motor vehicles

OVERVIEW:

- we recognize the MTO’s mandate to address issues of road safety that affect the users of Ontario’s roads, and the government’s responsibility inherent to that function
- we agree that a problem of overly aggressive driving by irresponsible individuals, including organized or impromptu competition with other drivers, has created an unsafe environment on Ontario’s roads
- we acknowledge the efforts MTO has taken to reduce the incidence of aggressive driving behaviour though amendments to the *Highway Traffic Act* that expand the effects of existing sections that deal with racing
- we strongly endorse other MTO initiatives in Bill 203 to address the ongoing issues with impaired drivers
- we believe that a fair balance is possible between a vehicle owner’s or driver’s rights to peaceful possession and lawful operation of a specialty vehicle and the government’s commitment to its citizens to provide a safe operating environment on Ontario’s roads

TYPES OF “STREET RACING”

- one type of street racing that has attracted a lot of media and government attention involves organized racing events where crowds of spectators watch vehicles pair up and drag race over short distances on straight sections of road, simulating the off-road quarter mile drag races held at race tracks that are professionally designed, operated, and managed

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- this organized type of street racing often occurs in industrial areas of cities where straight roads with shoulder access are easily accessible, and nearby roads allow escape routes in the event of detection
- these street racing events often involve vehicles that have been modified (including, in some cases, the installation of nitrous injection systems) in an attempt to deliver similar performance as vehicles being raced in legitimate off-road events on specially designed and constructed race tracks
- this type of street racing is an easy media target since the enforcement process is very photogenic and highly tensioned, with the police having an obvious advantage once the perpetrators are apprehended
- this type of event is condemned by all responsible vehicle owners, especially those who own similar vehicles but who have no interest in such dangerous behaviour or who race on legitimate off-road race tracks where safety is a priority
- a more serious concern, especially from a safety standpoint, are the high-speed collisions resulting from aggressive driving over longer distances on congested highways and city streets, sometimes involving contests of speed between multiple vehicles
- by far the majority of accidents blamed on “racing” have involved stock, unmodified vehicles that, in most cases, were not even high performance models, often owned by someone other than the driver such as a parent or sibling, and in many cases involved drivers who knew each other and embarked on the race as a sort of “testosterone challenge”
- enforcement of this type of driving behaviour is more difficult due to its impromptu nature as well as the high speeds and congested traffic conditions involved, and most enforcement for such offences occurs after the fact, ie: after the damage has already been done
- other types of “racing” are:
 - impromptu “stop-light” contests between strangers whose goal is to show off the superiority of their vehicle or driving abilities over the other
 - the high-speed pursuit of reckless drivers by enraged motorists who have been offended by such dangerous behaviour (this is road-rage, not road racing)

SVAO’S CONCERNS – STREET RACING

Program focus:

- we feel that MTO’s goal of improving road safety by reducing aggressive driving and racing, however commendable, has been unduly influenced by the current public, media, and police frenzy
- instead, MTO’s response should be based on an objective assessment of the actual safety risks involved and on the appropriate transportation sector that deserves the attention of the province’s enforcement resources

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- MTO should establish appropriate remedial measures that have a tangible impact on the problem, not just generate new media opportunities and rhetorical pronouncements that only serve to demean the government's reputation at a time when a truly responsible position on such issues are critical to the government's continued success
 - no road safety initiative by any element of the Ontario government or the police should infringe on the operation of any motor vehicle unless such infringement is clearly and expressly allowed by statute, especially those dealing with fairness and accountability such as the Canadian Charter of Rights and Freedoms
 - street racing is a driver problem not a vehicle problem, and we feel the government should address driver problems with driver solutions, not vehicle solutions
 - MTO and the Attorney General should stop blaming car enthusiasts for the "racing" accidents on our roads – that is simply not true
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Appeals / Accountability:

- the suspensions and impoundments allowed under Bill 203 are purely punitive and arbitrary, without any consideration of a driver's or owner's rights to defend themselves against such actions in a legal forum
- under the Commercial Vehicle Impoundment Program ("CVIP") administered by MTO, commercial vehicles found with specific safety defects (called "critical defects") can be impounded for 15 days in a similar manner as in Bill 203
- the Commercial Vehicle Impoundment Program allows for an appeal of the impoundment before the Licence Appeal Tribunal, but only where the vehicle is stolen or where no critical defects were actually present
- that program also allows for an application to the courts for the immediate release of the impounded vehicle on condition that all fees are paid and a security deposit posted
- however, Bill 203 does not allow any appeal or court application for either the suspension of the driver's licence or the impoundment of the vehicle
- under this legislation, even for stolen vehicles, the police officer is the only person who can order the early release of a vehicle impounded under Bill 203
- an enforcement officer may suspend and impound without laying the associated charge of "racing", which drastically reduces the accountability of an officer since there is no appeal process available, unlike the substantiation of the facts required to support a charge in court
- if a charge of "racing" is successfully defended in court, there is no statutory or regulatory provision for financial compensation for the costs generated by the licence suspension or vehicle impoundment, nor for a reversal of the drivers licence suspension in MTO's record

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- unlike the 12 hour suspension for drivers whose breath alcohol level results in a “Warn” or “Alert” from the prescribed and calibrated screening device, the suspension of a driver’s licence under this legislation is based on a purely subjective determination of the circumstances by an officer
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Enforcement:

- the Bill prohibits “racing”, “stunts” and “contests” and allows for the creation of regulations to define these terms
 - the Act allows officers to take action where they believe a person is driving, *or has driven*, in a race (or stunt), and the *Provincial Offences Act* section 76(1) allows an officer to lay a “racing” charge up to 6 months after the fact, but there is no time limit on the impoundment
 - although public input was solicited for a short time, we are concerned that the final definitions may be too vague to prevent abuse by overzealous police officers who might target lawful operators of specialty vehicles in order to achieve a higher level of notoriety in the news media or to boost their level of “performance objectives” required by most police agencies
 - several of our group have extensive enforcement and policy development experience in MTO, and this experience has make them very familiar with the extremely aggressive attitude of some police officers when performing road safety enforcement functions
 - also, anecdotal information from other sources suggest a similar careless and callous attitude towards vehicle owners and drivers of specialty vehicles
 - in some cases, the officer’s lack of knowledge of *Highway Traffic Act* offences involving technical issues such as equipment has resulted in unwarranted charges and plate removals
 - the “*if it looks like a duck it must be a duck*” attitude of some high level police officials has already resulted in unwarranted harassment of specialty vehicle owners who are not the least bit interested in on-road racing or stunts.
 - in our opinion, the deficiencies in Bill 203 and it’s proposed regulation will accelerate the harassment of specialty vehicle owners and drivers, and will create opportunities for charges, impoundments and licence suspensions where none are deserved
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SVAO’S CONCERNS – PROHIBITED EQUIPMENT

(eg: nitrous oxide injection)

BACKGROUND:

- Bill 203 prohibits the operation of a motor vehicle equipped with specified performance enhancing equipment ie: operable nitrous oxide injection system
 - nitrous oxide (aka “laughing gas”) is an oxidant not a fuel, and does not burn

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- nitrous oxide injection is an aftermarket device that injects liquid nitrous oxide into an engine to increase the amount of oxygen available for combustion, which allows extra fuel (gasoline) to be added to increase the power output for as long as the nitrous oxide lasts
 - this device is a popular add-on for drag racing vehicles since it is a relatively inexpensive method of increasing engine power for a short duration
 - automotive grade nitrous oxide contains sulfur dioxide, and unlike pure medical grade nitrous oxide, the automotive grade is useless for inhalation for delusional purposes (“huffing”) since the sulfur dioxide will result in extreme sickness rather than the expected delusional effects achieved through inhalation of pure nitrous oxide
 - the prohibition on nitrous oxide injection systems was proposed to MTO by police agencies as a means of reducing street racing
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SVAO’S CONCERNS:

- the existence of a nitrous oxide injection system in a motor vehicle does not automatically mean the driver of the vehicle is a street racer
 - the mere existence of *any* performance enhancing equipment or modification does not automatically mean the driver of the vehicle is a street racer
 - we are concerned that the ban on nitrous oxide injection systems in Bill 203 is a first step to further prohibitions on other performance enhancing equipment or modifications by specialty vehicle enthusiasts, supposedly in the belief that this will somehow improve road safety
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SVAO’S CONCERNS – PREMPTIVE SEIZURE OF VEHICLES

COMMENTS OF ATTORNEY GENERAL MICHAEL BRYANT:

- on June 20, 2007, Attorney General (AG) Michael Bryant was interviewed at Queen’s Park and made these comments:
 - *“Somebody who’s putting together a ... car for street racing might as well be putting together an illegal narcotic or putting together an explosive,”*
 - *“What I would say to anybody who is engaging in the illegal act of street racing is, we don’t need to wait until that car hits the road fully loaded”*
 - *“We can seize that car if we have information from police and, just on the balance of probabilities, if we can establish that that car is being used for the unlawful purpose of street racing, we will seize it and you will never see it again”*
 - *“We will crush your car. We will crush the parts. You will never see it again.”*

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- although such seizure may be allowed under the *Civil Remedies Act, 2001* (as amended by Bill 203, once proclaimed), the mere existence of performance enhancing components or modifications on a vehicle should not be construed as probable cause for its seizure and destruction for the reasons stated by the AG
 - to present such “evidence” to a court in order to obtain the necessary consent for such an action would be an abuse of the judicial process, and likely would not withstand a challenge under Canada’s *Charter of Rights and Freedoms*
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SVAO’S CONCERNS – OFF-HIGHWAY ENFORCEMENT

BACKGROUND:

- the Bill allows for the creation of regulations that will allow any or all of the *Highway Traffic Act* to apply to the off-highway operation of motor vehicles
 - it would appear this new approach is intended to expand the reach of the Act to vehicles being operated on private property
 - we believe this may give police officers new powers to enforce all aspects of this program, including licence suspensions and vehicle impoundments, even when the targeted vehicles are not being operated on a highway
 - this could result in the undeserved impoundment of vehicles that have been designed and built only for off-road use and are being used as such (eg: drag racing vehicles), or street legal vehicles racing or safely doing “stunts” on private parking lots or other private property that would otherwise be prohibited under the Act if performed on a highway
 - if taken in the context of the AG’s remarks, this concept would allow the seizure of a vehicle from private property solely on the basis of a perceived risk to public safety from the equipment being installed or modifications being made to the vehicle, rather than for any demonstrated hazard from a driver’s behaviour on the road
 - this could even affect major events such as the Toronto Gran Prix, or promotional events involving the off-road use of motor vehicles
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SUMMARY

- in our opinion, the development, implementation and delivery of Bill 203, especially considering the AG’s remarks, will have the following effects on the lawful operation and ownership of specialty vehicles in Ontario:
 - it will accelerate the level of police harassment of drivers and owners of specialty vehicles in Ontario, and will unreasonably limit the peaceful possession and lawful enjoyment of these vehicles by their owners
 - it will reduce the numbers of specialty vehicles on Ontario’s roads by making their continued operation too onerous for their owners to endure

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- will adversely affect the scope and quality of the specialty vehicle hobby by limiting the modifications available to vehicle builders and by restricting the legal operation of such vehicles
- will have severe economic consequences for:
 - companies that manufacture, market and install performance enhancing equipment and perform modifications, as well as those who service this industry segment with related products and services (insurers, appraisers, transportation specialists, show promoters, cruise events, charity auctions, etc.)
 - businesses that do diagnostic testing using dynamometers to simulate on-road or on-track operating conditions, since they could be falsely identified by competitors or others as building vehicles for street racing resulting in unwarranted seizure of vehicles, parts and equipment, with serious consequences for their viability (one such high visibility chain employs over 50 employees)
 - businesses that rely on the tourism revenue that will be severely reduced due to adverse publicity from this program, resulting in enthusiasts from outside Ontario (especially the USA) choosing events in their own area instead
- if applied arbitrarily to specialty vehicles as we fear, the licence suspension and impoundment provisions in the Bill that target street racing, including those suggested by the Attorney General, will have no effect on the problem of accidents caused by reckless and irresponsible drivers on Ontario's roads