

A Brief Comment on an Inquiry into Enforcement and Standard of Care Issues Involving Vehicles with Improper/Insecure Loads on Ottawa and Ontario Roads



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1.0 Origins of this Report

Over a number of months in 2015 I observed a large number of trucks and especially pick-up trucks on Ottawa streets, driveways, and public and private parking lots which were in violation of Highway Traffic Act regulation 111(2) Proper Loading, which states:

“No person shall operate or permit to be operated upon a highway a motor vehicle that carries a load or draws a vehicle that carries a load unless the load is loaded, bound, secured, contained or covered so that no portion of the load may become dislodged or fall, leak, spill or blow from the vehicle.”

Having witnessed many vehicles with improper/insecure loads while conducting the Walking Security Index project for the Region of Ottawa-Carleton and then the City of Ottawa, 1995-2002, (http://www.wellar.ca/wellarconsulting/New_WSI.html), I was struck at the time by the frequency and widespread distribution of such sightings.

However, that contravention of the Highway Traffic Act was outside the purview of my study terms of reference, and it was put on the “research back burner”.

The matter of violations of Highway Traffic Act regulation 111(2) Proper Loading became a topic of research interest in early 2015 via information from two sources:

1. Communications from individuals who had been on the receiving end of ‘material’ that fell off, slid off, or blew off improperly loaded vehicles; and
2. News reports on disturbing incidents involving serious consequences for pedestrians, cyclists, and motor vehicle occupants as a result of loads becoming dislodged, falling, or being blown from vehicles that were not properly loaded.

As for the scope and magnitude of the problem, indications that it appeared to be widespread and a matter of daily occurrence on collector streets, regional roads, and Highway 417 (the Queensway) in a variety of weather conditions, were confirmed upon undertaking informal surveys while on numerous walk, cycle, transit, and private motor vehicle trips for work, shopping, recreation, medical, and other purposes.

By way of brief background on my findings, while walking through shopping centre parking lots that I use on a regular basis (e.g., Carlingwood Mall, Fairlawn Plaza, Bayshore, Lincoln Fields, Hampton Park Plaza), I often observed from one or two up to 7-10 vehicles not in compliance with Highway Traffic Act regulation 111(2) Proper Loads.

And, I frequently observed improper/insecure loads on vehicles during walk, cycle, driving, and transit trips in many parts of Ottawa, including Highway 417.

In combination, concerns about the frequency at which improperly-loaded vehicles were encountered, and the serious consequences suffered by people on the receiving end of materials jettisoned from vehicles travelling at 50, 60, 70, 80 and 100 or more k/h, or running into or over materials that had fallen, spilled, leaked, etc., onto roads and into the way of oncoming vehicles, motivated me to bring the matter to the attention of Ottawa Police Service (OPS) in the manner of an inquiry rather than a complaint.

The approach taken was to inquire about the issuance of citations by OPS for offences involving Highway Traffic Act regulation 111(2) Proper Loads, which seemed to me to be a request that could be readily responded to in short order, at little or no cost in this digital age, and would not involve any “heavy lifting” on the part of OPS.

It was my thinking that if the numbers were in the range of 5-10 citations issued per day, which is at the lower end of my counts that were based on very limited temporal and spatial coverage, then I could suggest to the Ottawa Police Service that vehicles carrying improperly secured loads are more prevalent on Ottawa streets than indicated by the number of citations issued, and that ‘highly aggressive’ remedial measures are in order for standard of care purposes and other public interest reasons.

And, if the numbers were in the range of 20-30 or more citations issued per day, then I could suggest to the Ottawa Police Service that since there are still many vehicles carrying improperly secured loads on Ottawa streets, ‘moderately aggressive’ remedial measures are in order for standard of care purposes and other public good reasons.

Either way, it appeared to me, an examination of the citation files could be instructive in terms of bringing a possible enforcement and/or standard of care issue involving traffic safety to the attention of Ottawa Police Service. An email was composed in the above regards, and sent to Ottawa Chief of Police, Charles Bordeleau.

2.0 Inquiry Regarding Citations Issued for Improperly Loaded Vehicles

Based on concerns about the seemingly large number of vehicles in violation of 111(2) of the Highway Traffic Act (HTA), the following email (presented in italics for differentiation from the body of the report) was sent to Chief Charles Bordeleau, Ottawa Police Service.

***From:** Barry Wellar [<mailto:wellarb@uottawa.ca>]
Sent: Wednesday, August 3, 2016 9:17 PM
To: 'BordeleauC@ottawapolice.ca'
Subject: Citations Issued for Insecure/Unsecured Loads*

Dear Chief Bordeleau,

I am concerned about what I believe to be a large and seemingly growing number of pick-up trucks and other trucks on Ottawa streets that are carrying insecure/unsecured loads, and I

wish to raise this matter as it relates to the Highway Traffic Act and, in particular, enforcement of the Highway Traffic Act by Ottawa police with respect to insecure/unsecured loads.

In my driving, walking, transit, and cycling trips in many parts of the city, including traverses of public parking lots and commercial parking lots, during the Summer months I have observed a variety of loose objects in the beds of these vehicles, including cement blocks, paving stones, patio stones, bags of cement, metal pails, covered plastic pails (unknown contents), wheelbarrows, ladders, rolls of sod, lawn mowers, shovels, tire rims, rims with tires, metal rods, gas cans, tools, tool boxes, firewood, tree limbs, wooden crates, and pieces of lumber, and the Winter months add other items such as chunks of snow and ice, snow blowers, snow scrapers, ice chippers, and augers, any of which could become an injury-causing, accident-causing, or even lethal projectile in the event of a sudden stop such as by colliding with another vehicle, running into a curb, running into a telephone pole or a tree, overturning, jamming on the brakes, turning sharply, and so on.

I would therefore appreciate learning about the efforts made by Ottawa police to enforce the insecure/unsecured loads component of the Highway Traffic Act.

There is a mix of pertinent information in this regard, as you are aware, but in this instance I am particularly interested in learning about the number of citations issued by Ottawa police in 2014, 2015, and to the end of July 2016, and the location and dates and times of the issuance of insecure/unsecured load citations.

I am assuming that this information is held in digital format and can be readily provided or, perhaps, directly accessed by me with your authorization if that is more convenient for you.

I believe this to be an important public safety matter and, as a result, I look forward to obtaining the insecure/unsecured load citation information at the earliest.

In the interests of improving public safety I remain,

Yours sincerely,

Barry Wellar

While it seemed to me that successful transmission of the email by Ottawa Police Service (OPS) should have triggered an immediate acknowledgement, when no receipt came I took it to mean that the agency had business and courtesy protocols for electronic communications that were different from those with which I was accustomed.

And so I waited to receive a response from OPS, whether in the form of citation data or access to data files, on the understanding that, as noted in my email to Chief Bordeleau,

“I am assuming that this information is held in digital format and can be readily provided or, perhaps, directly accessed by me with your authorization if that is more convenient for you.”

After almost six (6) months had passed with no response from Ottawa Police Service, and I had perceived no apparent decrease in the incidence of vehicles with improper/insecure loads on Ottawa streets, and on Highway 417, I believed that it would be appropriate to inquire about the status of the response to my inquiry of August 03, 2016.

The following email (*italics added*) was sent December 28, 2016, to Chief Bordeleau, and was copied to Ottawa Mayor Jim Watson, Ottawa Councillor Eli El-Chantiry, Chair of the Ottawa Police Service Board, and MPP Yasir Naqvi, Attorney General of Ontario.

By way of brief explanation about the copied officials, after a delay of almost six months without any communication from Ottawa Police Service, questions had arisen about the disposition of the email of August 03, 2016. It therefore seemed prudent to expand the contact list to include officials with enforcement and standard of care obligations beyond those of Ottawa Police Service.

Or, to re-phrase, and drawing on my experience in these matters as opposed to suggesting a general way to proceed, when it comes to standard of care issues with the attendant possibility of legal action, on occasion it is advisable to name in emails, reports, and other productions the principal(s) directly involved in communications, and to also name elected and appointed officials likely to be held accountable or liable for an entity's failure to meet standard of care obligations.

From: Barry Wellar [*mailto:wellarb@uottawa.ca*]

Sent: Wednesday, December 28, 2016 9:57 PM

To: 'BordeleauC@ottawapolice.ca'

Cc: Jim.Watson@ottawa.ca; 'El-Chantiry, Eli'; Yasir Naqvi, MPP (Constituency Office) (*ynaqvi.mpp.co@liberal.ola.org*)

Subject: FW: Citations Issued for Insecure/Unsecured Loads

Dear Chief Bordeleau,

I am writing to inquire about the status of your reply to my inquiry of August 3, 2016, Citations Issued for Insecure/Unsecured Loads.

I look forward to receiving your response by email at the earliest.

Sincerely,

Barry Wellar

The following reply (*italics added*) was received January 7, 2017) from Chief Bordeleau.

*From: Bordeleau, Charles J [mailto:BordeleauC@ottawapolice.ca]
Sent: Saturday, January 7, 2017 4:43 PM
To: Barry Wellar
Cc: Fortunato, Maria
Subject: Re: Citations Issued for Insecure/Unsecured Loads*

Mr. Wellar

I was able to determine that your initial email failed to pass by our spam filter.

I have obtained data on charges laid. I am waiting for some information on the work that we do in partnership with MTO.

Tx

*Charles Bordeleau O.O.M.
Chief of Police / Chef de Police
Tel / tél: 613-236-1222 ext 5655<tel:613-236-1222%20ext%205655>
Cell 613-791-4094<tel:613-791-4094>
Fax / télécopieur 236-9360<tel:236-9360>*

(Note: The spam filter ‘explanation’ is a matter for another day)

3.0 Response to Request for Data about “... the number of citations issued by Ottawa police in 2014, 2015, and to the end of July 2016, and the location and dates and times of the issuance of insecure/unsecured load citations.”

Not being aware as to whether anyone at OPS appreciates the difference between data and information, nor how OPS treats inquiries from the public regarding OPS records, I attempted to make things easy for whoever deals with these requests by stating in the initial email,

“I am assuming that this information is held in digital format and can be readily provided or, perhaps, directly accessed by me with your authorization if that is more convenient for you.”

Long story short is that I was sent an aggregate figure, as follows:

“Between January 1, 2014 and December 31, 2016 the Ottawa Police Service issued 404 offence notices related to vehicle loads.”

Since the response did not address the request made in the initial inquiry there was a follow-up communication in that regard, which in turn led to OPS playing what is known in the information access field as the “FOI Card”, by sending me the following email.

From: FOI Analyst [mailto:FOIAnalyst@ottawapolice.ca]
Sent: Wednesday, January 11, 2017 7:32 AM
To: 'wellarb@uottawa.ca'
Cc: Fortunato, Maria; Bonderud, Brian W
Subject: FW: Citations Issued for Insecure/Unsecured Loads

Good Morning Mr. Wellar,

All information held by the Ottawa Police Service is subject to the Municipal Freedom of Information and Protection of Privacy Act.

Therefore, you must complete a formal request under the Act. Please complete the attached request form or your request can be made on business letterhead. As per the Act there is a \$5.00 application fee that must accompany your request. Also, the Act allows for certain fees for information requests. Please see the attached Summary of Fees.

Your request and application fee can be mailed or dropped off at the following addresses:

By Mail:

Ottawa Police Service
PO Box 9634 Station T
Ottawa, ON K1G 6H5
Attn: FOI Analysts

By Hand:

Ottawa Police Service
2670 Queensview Drive
Ottawa, ON K2B 8K1
Attn: FOI Analysts

Regards,

Carol Brunet
Freedom of Information Analyst

Ottawa Police Service

613-236-1222 ext 5379
foianalyst@ottawapolice.ca

Unfortunately, since the requested citation data were not being provided by Ottawa Police Service, and I was not granted electronic access to files, the intended inquiry into enforcement and standard of care issues involving vehicles with improper/insecure loads on Ottawa and Ontario roads had hit a major obstacle, necessitating a change of plan.

In brief, because pursuing a Freedom of Information application can be unduly onerous with a low probability of being successful, or completed in a timely manner if a party named in the

FOI application “drags its feet”, further engagement with Ottawa Police Service with respect to this inquiry clearly pointed to a waste of time on my part.

I therefore decided that in the interests of moving this safety matter forward in an expeditious manner, an advisable course of action was for me to forego examining questions about the state of enforcement by Ottawa Police Service of Highway Traffic Act regulation 111(2) Proper Loading, and to shift the burden of work to OPS, the City of Ottawa, and the Attorney General of Ontario.

That is, believing that the observations presented and arguments made speak for themselves, it is my impression that they constitute a strong, reasonable, and legitimate case sufficient to persuade the City of Ottawa, and the Attorney General of Ontario, to pursue with all due diligence the enforcement and standard of care issues raised in this report regarding Highway Traffic Act regulation 111(2) Proper Loading. Consequently, in Section 4.0 I discuss referring to the City of Ottawa and the Attorney General of Ontario the questions asked and issues raised in association with my inquiry of August 03, 2016 to Ottawa Police Service.

4.0 Referring the Enforcement and Standard of Care Issues Regarding Highway Traffic Act regulation 111(2) Proper Loading to the City of Ottawa and the Attorney General of Ontario

With regard to the aggregate data about citations (offence notices) provided above in section 3.0,

“Between January 1, 2014 and December 31, 2016 the Ottawa Police Service issued 404 offence notices related to vehicle loads”,

I believe that this number of notices indicates that there are serious enforcement and standard of care issues associated with the disposition of Highway Traffic Act regulation 111(2) Proper Loading by Ottawa Police Service.

In short, the period between January 1, 2014 and December 31, 2016 is comprised of almost 1100 days, during which time OPS issued 404 offence notices related to vehicle loads, or about one notice approximately every 2.7 days, or one citation per 65 or so hours.

However, it is a rare walk, bike, motor vehicle, or bus transit trip when I do not observe anywhere from two or three vehicles to six or eight vehicles and sometimes 12-15 vehicles in violation of Highway Traffic Act regulation 111(2) Proper Loading.

And, very importantly should there be questions about my observations, these are not counts from a methodologically designed survey to identify the number, percentage, etc., of vehicles with loads that are or are not “loaded, bound, secured, contained or covered so that no portion of the load may become dislodged or fall, leak, spill or blow from the vehicle”.

Rather, these counts arise from what might be termed casual trips, such as those by private motor vehicle to arenas, by foot or bike to area shopping centres, and to and from downtown by bus, and they significantly exceed the number of citations issued by Ottawa Police Service, which average out to one citation issued every 2.7 days or one citation issued per 65 hours for all the roads within the duty area of Ottawa Police Service, as well as any other traffic-bearing surfaces within the duty area of Ottawa Police Service to which Highway Traffic Act regulation 111(2) Proper Loading applies.

Therefore, based on counts which are derived from observing vehicles on only a very, very small portion of Ottawa's road network, driveways, and surface parking lots, and for extremely limited observation periods, I believe that there is a serious enforcement failure problem on the part of Ottawa Police Service regarding Highway Traffic Act regulation 111(2) Proper Loading.

And, as a consequence, it occurs to me that there is an associated failure on the part of Ottawa Police Service and the City of Ottawa to achieve an appropriate standard of care on behalf of pedestrians, cyclists, private motor vehicles operators and passengers, other road users, as well as other individuals who could be affected should all or portions of loads which are not properly loaded become dislodged or fall, leak, spill or blow from vehicles.

Further, based on media items as well as observing loaded vehicles while driving on roads and using parking lots in various parts of Ontario, I believe that the lack of enforcement and inadequate standard of care situations in Ottawa are duplicated on roads within communities, as well as those linking communities, elsewhere in Ontario.

As a result of those observations and interpretations of observations, I refer this file to the City of Ottawa and the Office of the Attorney General of Ontario for the purpose of taking whatever steps are necessary to ensure that Highway Traffic Act regulation 111(2) Proper Loading is properly enforced in Ottawa, and elsewhere in Ontario, respectively.

5.0 Conclusion

My intention to examine how well Highway Traffic Act regulation 111(2) Proper Loading is enforced in Ottawa was not achievable due to lack of access to pertinent offence notices or citation data on file with Ottawa Police Service.

However, based on the number of improper/insecure vehicle loads which I have observed over a number of years, and media reports on incidents involving improper/insecure vehicle loads, I believe that there is a significant enforcement problem in Ottawa and in other venues in Ontario with respect to Highway Traffic Act regulation 111(2) Proper Loading.

And, flowing from the enforcement problem, I further believe that the City of Ottawa and the Office of the Attorney General of Ontario are obliged to give due consideration to the identified enforcement problem for reasons related to their respective standard of care obligations.