

**WeirFoulds<sup>LLP</sup>**

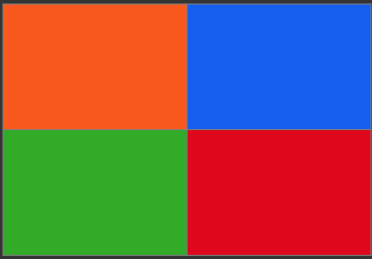
Transportation Health & Safety Association of Ontario  
Fleet Safety Council

45<sup>th</sup> Anniversary  
ANNUAL EDUCATIONAL CONFERENCE  
*Crowne Plaza Hotel and Conference Centre*  
*– Niagara Falls, ON*

Accidents: An Ounce of Prevention is Worth a Pound of Cure

October 2010

Presented by: Carole McAfee Wallace  
416.947.5098  
[cmcafee@weirfoulds.com](mailto:cmcafee@weirfoulds.com)



# Outline of Presentation

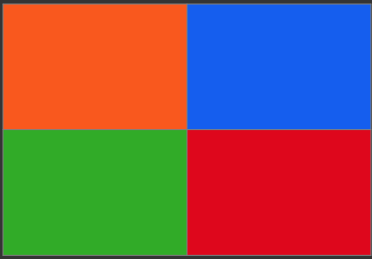
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## Part I Steps to take before an accident occurs

- Drivers
- Vehicles

## Part II What to do at the Scene of an Accident

- Who investigates?
- What are the driver's legal rights/legal obligations?
- Experts



# Outline of Presentation cont'd

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## Part III Post Accident

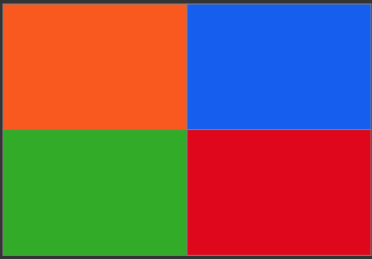
### A. Defending charges

- Legal representation
- Driver defences
- Company defences

### B. Assessing cause of accident

- Do you need to adjust your safety and compliance systems

## Part IV Questions?



# Part I – Steps to take before an Accident Occurs

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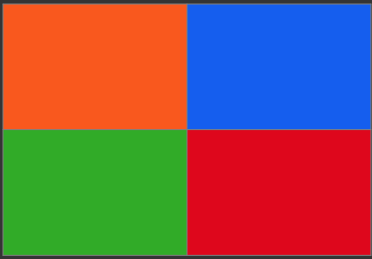
## A. Drivers

### i. Hiring process

- Reference checks
- Driver's Abstract
- Road Test
- Keep Records

### ii. Training/Orientation

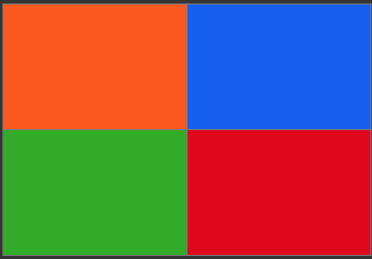
- Who does it?
- Keep records



# Part I – Steps to take before an Accident Occurs cont'd

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- A. Drivers cont'd
  - iii. Policies/Procedures (discipline)
    - Terms of employment
    - What to do in case of accident
    - Keep records
  
  - iv. On-going training
    - Safety meetings
    - One-on-one
    - New laws
    - Defensive driving
    - Random tests and inspections
    - Keep records

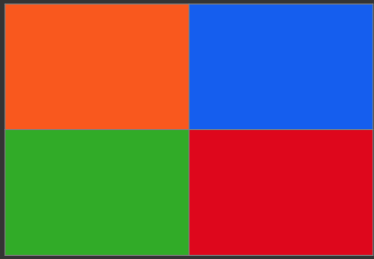


# Part I – Steps to take before an Accident Occurs cont'd

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## B. Vehicles

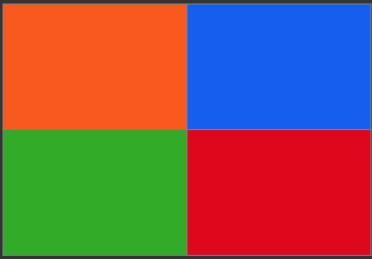
- i. HTA, s.107(1) requires every operator to establish a periodic inspection and vehicle maintenance system, and keep written record
  - Preventative maintenance policy – in writing
  - Who provides maintenance?
    - in-house vs. third party
  - Ensure vehicles are in fact maintained in accordance with policy
  - Checks on/assessment of the system
  - Random Inspections
  - Keep records



## Part II – What to do at the Scene of an accident

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- A. Who may investigate?
- Police, MTO, MOE
  - All have statutory authority to investigate



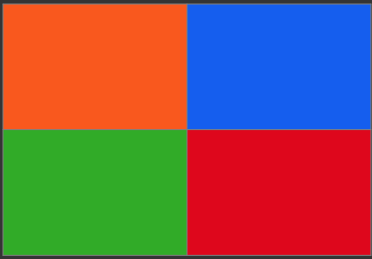
## Part II – What to do at the Scene of an accident cont'd

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### B. Legal obligation to co-operate

#### i. Section 200 of the HTA

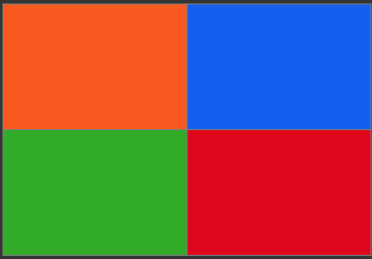
- a) Remain at, or immediately return to, the scene of accident (if involved directly or indirectly)
- b) Render all possible assistance



## Part II – What to do at the Scene of an accident cont'd

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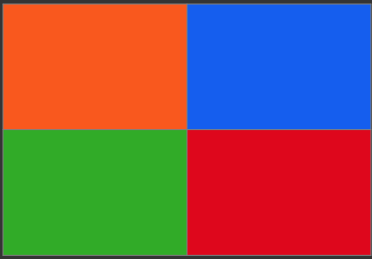
- c) Upon request, give in writing to any person sustaining injury or loss, to any police officer, or to any witness:
- Name
  - Address
  - Driver's Licence Number
  - Insurance – insurer/policy number
  - Name/address of vehicle owner
  - Vehicle permit number



## Part II – What to do at the Scene of an accident cont'd

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- d) Penalty for non-compliance
  - \$400.00 to \$2,000.00 fine
  - Imprisonment up to 6 months
  - Fine and imprisonment
  - Licence suspension up to 2 years

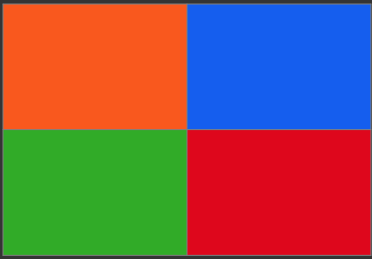


## Part II – Steps to take before an Accident Occurs cont'd

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### ii. Section 216 of the HTA

- Gives police officer authority to require driver to stop vehicle
- Failing to do so:
  - i. Fine \$1,000.00 to \$10,000.00
  - ii. Imprisonment up to 6 months
  - iii. Or both
  - iv. If willfully avoided police, fine up to \$25,000, licence suspension

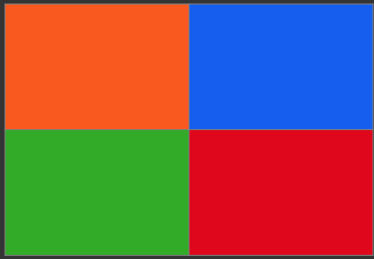


## Part II – What to do at the Scene of an accident cont'd

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### iii. Section 216.1 of the HTA

- a) Gives officer power to examine a cmv and its contents and equipment for compliance with HTA, *Compulsory Automobile Insurance Act* or *Dangerous Goods Transportation Act*
  - Diver **shall** assist
- b) Gives officer power to stop cmv
- c) Gives officer power to require driver, operator or other person in control of the vehicle, to surrender all documents relating to ownership, operation, carriage of goods, and all information re: the current trip
- d) Failure to comply - \$250.00 to \$20,000.00 fine

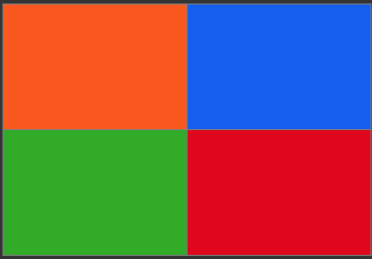


## Part II – What to do at the Scene of an accident cont'd

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### C. Legal right to remain silent

- Criminal vs. Regulatory context
- Regulatory law requires more intrusive powers to ensure regulatory compliance
- *Charter* still applies, but context is important



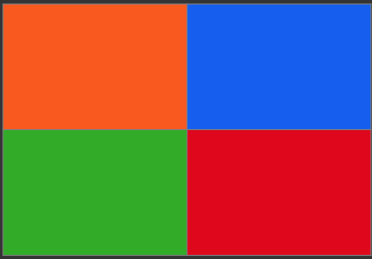
## Part II – What to do at the Scene of an accident cont'd

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- 2 key provisions of the *Charter*

S.8 - “Everyone has the right to be secure against unreasonable search and seizure.”

S.7 – “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

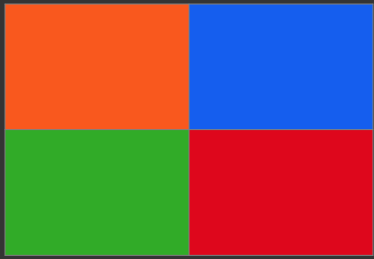


## Part II – What to do at the Scene of an accident cont'd

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### Search and Seizure

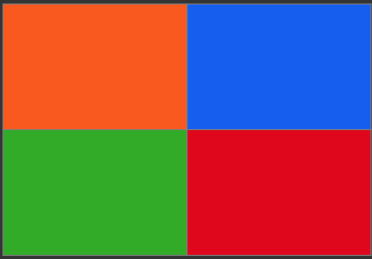
- Regulatory inspections to verify compliance vs. quasi-criminal process of gathering evidence for a prosecution
- Basic intent is not to uncover a breach of the Act: the purpose is to protect the public
- The possibility that the inspection will uncover facts that point to a violation does not alter the underlying purpose behind the exercise of the powers of inspection



## Part II – What to do at the Scene of an accident cont'd

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- However, if the inspector enters an establishment because he has reasonable grounds to believe that there has been a breach of the Act, this is no longer an inspection but a search – the intent is to see if a breach has been committed
- If predominant purpose is the determination of penal liability, cannot use inspection and production powers



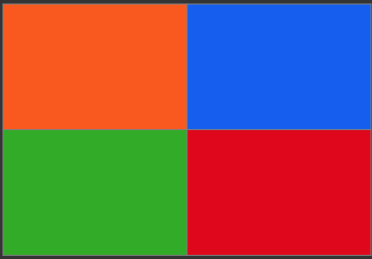
## Part II – What to do at the Scene of an accident cont'd

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### Crossing the Rubicon

Consequences of the adversarial relationship:

1. No further statements can be compelled
2. No documents may be examined or inspected, except by warrant

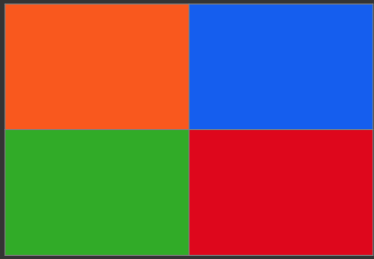


## Part II – What to do at the Scene of an accident cont'd

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### Warning/Caution

- The defendant's statement made to a person in authority can be introduced as evidence by the prosecution
- But first, prosecution must prove beyond a reasonable doubt that it was voluntary
- No threats or promises
- Not product of oppression
- If police issue a caution (i.e. "statement you give may be used in court") and a statement is given, prosecution may be able to introduce statement in court
- If cautioned, not obligated to give the officer a statement

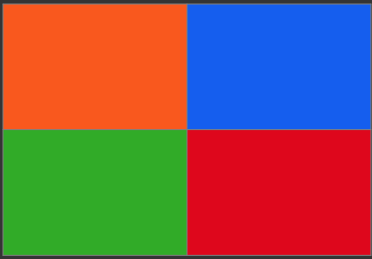


## Part II – What to do at the Scene of an accident cont'd

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### Expert Evidence

- Will one be required?
- Will they need to inspect scene?  
Equipment?
- Chain of custody

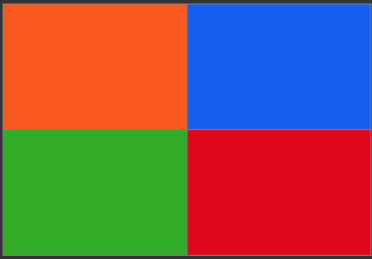


# Part III – Post Accident

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## A. Defending charges

1. Legal representation – When should driver and company be separately represented?
2. Who should you hire?
  - Cost
  - Reputation
  - Referrals
3. Defences available
  - a) Crown has burden of proving all essential elements of the offence beyond a reasonable doubt
  - b) Due diligence defence: must prove, on a balance of probabilities, that all due care has been taken

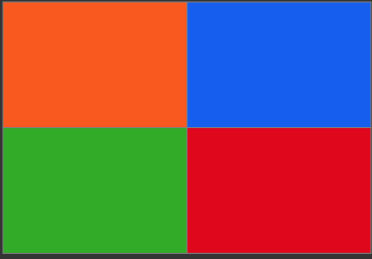


## Part III – Post Accident cont'd

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### B. Assessing cause of accident

- What does it tell you about your system?
- Do you have the elements of a due diligence defence?
- Due diligence = high standard of awareness and decisive, prompt and continuing action
- What changes do you need to make? How do you effectively implement them?
- Keep records



# Part IV

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Questions?