Updates in red. Updated November 25th, 2005
WARNING! LONG AND POTENTIALLY BORING! (This is what happens when you're bored at work)

I've compiled this guide to help those of you who want to take your tickets to court. It has some answers to common (and not so common) questions. Feel free to correct any mistakes, or to suggest any topics/improvements. This has a lot of information that's also on the "Fight your speeding tickets" website, but it appears to be down a lot(exceeded it's bandwidth).

DISCLAIMER: The usual - This information is not legal advice. This information is accurate to the best of my knowledge, but I am not responsible for any consequences that may result from your using or misusing this information. Blah blah blah, etc.

Handy references: http://www.magma.ca/~fyst/ <- This is a really good read, and I suggest that everyone read it.
Also: "The Law of Traffic Offences", 2nd Edition by Scott C. Hutchison & John G. Marko, published by Carswell, 1998.
and: www.canlii.org/index_en.html <- Free access to case law and judgements in Canada (not a complete reference, though).
and: http://192.75.156.68/DBLaws/Statutes/English/90h08_e.htm <- Highway Traffic Act (HTA)
and: http://www.escortradar.com/errors.htm <- Common traffic radar errors. However, I don't know how credible this would be if used as evidence in court.
I also believe the Toronto Public Library has some case law available that you can look up. Ask your local branch for details.

NEVER choose the option "Plead guilty with an explanation."
This is a waste of your time. By pleading guilty, you have admitted to the crime in question, and no plea-bargaining is allowed (i.e. the charge cannot be changed or reduced). The amount of fine you pay *might* be reduced, but that's it.

It is far better to set a trial date (or even a first appearance). It doesn't take any more time if you are plea-bargaining, and there is the chance that the officer will not show up. Even if you don't want to go to trial, the crown almost always accepts plea-bargains to lesser charges (which carry reduced fines as well as possibly reduced demerit points).

Get a trial date
First, if you want to fight your ticket, you must ask for a trial date. This involves going to the court house and filling out a form saying that you want a court date. Just be careful of one thing: There is a check box saying "I wish to challenge the crown's evidence at the trial," yes/no, or something to that effect. **MAKE SURE that you choose to challenge the crown's evidence or else the cop doesn't have to show up, and you have no chance to win at all**. In some jurisdictions, you may have the option to mail in your request for a court date. However, those of us in the GTA are out of luck. They figure that by forcing you to go into the office to get a court date, they will reduce the number of trials they have to deal with.

I should also point out that, even if you don't want to fight your ticket, you should still take it to court, because there is a chance that the officer won't show up, or that your ticket will be scheduled so far away that it can be dropped based on Section 11b of the charter. Worst case, you miss a day of work, and you get to plea-bargain the charge down. The exception to this would be if you get a ticket way out in the middle of nowhere, because your court date will also be way out in the middle of nowhere. It may not be feasible to get out to the middle of nowhere on a weekday, so if you still want to fight it, it may be easier to just hire one of those paralegals (x-copper, or whatever). Also, it is much more probable that the cop WILL show up, simply because they don't have to deal with the huge volume of tickets that the GTA or other large cities have. That, and those small, middle of nowhere places generally have only one or two cops on traffic duty.

Another thing, if you were nabbed by one of those multi-officer speed trap operations, or you were paced from an airplane, ALWAYS TAKE IT TO TRIAL!!! In order for the crown to win, ALL of the officers involved in the speed trap must show up for the crown to have a case. This is because one officer cannot testify for the actions of ANYONE but himself. Unless that officer did everything himself (calibrated the radar unit, observed your speed, clocked you on the radar, pulled you over, and wrote you the ticket), other officers must be present during the trial. If the officer tries to say "The other officer told me XYZ" or tries to admit any evidence that he himself is not responsible for, you immediately object on the basis of hearsay evidence. See Section G) for more details.

In the event that all the officers show up, whenever one officer is giving his/her testimony, you can (and should) ask that all other officers in the case leave the room. This is known as an exclusion of witnesses, and is to make sure that the testimony of any officer is not influenced by hearing the other officer's testimony. This is great because they all probably won't remember what happened, and if their testimony has conflicting evidence, it works in your favour for establishing reasonable doubt. One thing to be very careful of is hearsay evidence. Be on your guard and do not let any of the officers get away with admitting any evidence that they cannot testify about. See section G) for more details.

Ask for disclosure

As soon as you get your trial date, the first thing to do is to ask for disclosure. It's best not to ask for disclosure until you get your court date, because it might remind someone that your trial hasn't been set. It's always possible that your case might fall through the cracks and you never get a trial date. Ask to see the cop's notes and whatever he may be relying on as evidence in trial. This is vital because you can't prepare a defense without knowing what the cop will be relying on. To send a disclosure request, just write a brief letter to the Provincial Prosecutor's office asking for disclosure. Be sure to include your full name, the offence date, and ticket/offence number. Also, be specific in what evidence you ask for. If you just say "send me all evidence you will be relying on in the trial", they'll probably be lazy and not send you very much. Be specific: e.g. "please send me: 1) Both sides of the officer's ticket, 2) the officer's notes on the day of the offence, 3) etc." If you happen to already be at the prosecutor's office, they may have a disclosure request form that you can use and submit right there. Just make sure you get a copy

for yourself.

The address of the prosecutor's office is on the back of your ticket. Make sure you send the request either in person or via registered mail so they cannot claim they never received your request. Document all contact that you have with the prosecutor's office, in the event that they are not cooperative, you can motion to have the charges dropped based on non-disclosure, and you have all your proof ready.

Generally, all that is in posession of the prosecutor's office will be a prosecution sheet, which usually only has things like a copy of the ticket, and the officer's notes. If you need more information, usually only the officer in question has this information. For example, for a speeding charge, generally, only the officer will know which make and model radar unit he used, which he may or may not have written in his notes. If you need any other evidence, you have to ask the officer in question for this evidence. Again, document all contact you have with the officer. Write down the name(s) of who you spoke to, and the time and date of your call. If the officer gives you a hard time, tell the officer that the "Freedom of Information Act" (for Ontario) gives you the priviledge to obtain this information. If he still refuses, write it all down and on your court date, you can motion to have the charges dropped. If your motion is denied, you can have the JP order the officer to give you this information and to reschedule your court date so you have a chance to look over the information.

Moving on...Pick the description that suits you best and read the detailed blurb corresponding to the same number. It's like those "choose your own adventure" books.

0.25)(Speeding) The officer reduced the ticket at the scene. If I take it to trial, can I be charged for the actual speed I was going?
0.5) What do I do for a "first appearance"?
0.75) The officer made a mistake on the ticket! Can I get it thrown out?
0.875) What qualifications are required to be a Justice of the Peace?
0.9375) How long does it take to receive a trial notice?

Options if you haven't asked for disclosure:
1) Trial date more than 8 months away from the offence date.
2) Trial date less than 8 months away from the offence date, and your court date is less than a month, but more than two weeks away.
3) Trial date less than 8 months away from the offence date, and your court date is more than a month away.
4) Trial date less than 8 months away from the offence date, and your court date is less than two weeks away.

Options if you already have asked for disclosure:
CORRECTED PROCEDURE 1) Trial date more than 8 months away from the offence date.

a) Trial date less than 8 months away from the offence date, and you have not received full disclosure.
b) Trial date less than 8 months away from the offence date, and you have received full disclosure

Options on your court date
i) The officer is not present
ii) You know you are guilty, just want it to be over and done with, and want to plead guilty/guilty with an explanation.
iii) It is your court date and you haven't asked for disclosure or motioned for an adjournment.
iv) You have asked for disclosure at least twice and you have not received anything.
v) The officer is present, and you are ready to proceed with a trial
vi) Procedure on your court date before the trial
vii) Your trial date is more than 8 months away from the offence date, and you were not able to make a motion beforehand

Options for taking it to trial (Ways to defend yourself)
A) What is a valid defence?
B) Defence of necessity
C) Fighting a speeding charge
D) Fighting a careless charge
E) Fighting a failure to stop charge
F) Procedure on your court date during the trial
G) Basic Rules of evidence
H) More to come at a later date.

0.25)(Speeding) The officer reduced the ticket at the scene. If I take it to trial, can I be charged for the actual speed that I was going?

The only way the charge can be bumped back up to the original speed that you were going is if you actually take your ticket to trial. Then, you must be proven guilty beyond a reasonable doubt of the *original speed* (not what is listed on the ticket as the reduced speed), the prosecution must ask to have the charge bumped back up, and finally, the Justice of the Peace must agree to this. Only then can you be charged for the original speed.

If you have time, you should still request a court date for any ticket. You might get lucky and the officer might not show up to trial, or, if your court date is scheduled very far away, you can make a section 11b charter claim (see 1)). In the worst case, you can still just plead guilty on the day of your trial, and there is no possibility that the charge could be bumped back up.

The case law reference for the precent-setting case is R. v. Antunes (2004), Ontario Court of Justice. Court File No. 2860 999 00 72261154

0.5) What do I do for a "first appearance"?
A first appearance is not a trial date (you shouldn't be going to trial on that day). Basically, it allows the crown to make sure that you understand the charges that are being brought against you, and also what your intentions are (if you are fighting it or not, with or without legal representation, etc.). If you want to plead guilty or accept a plea-bargain, you do not have to come back, and this can be done right then and there. If you are pleading not guilty, and in the event that the crown prosecutor is a sneaky not-nice, they may try to get you to go to trial on that day. This is unreasonable, and if they pull that stunt, you can easily get it delayed (motion for an adjournment for so many reasons).

You do not need to have disclosure for your first appearance. However, your first appearance is a great time to ask for disclosure, if you are pleading not guilty. Ask for disclosure on the record - i.e. don't do it before or after. Do it while you are on the stand, and have your disclosure request in writing (with a copy for your own records), although there may be disclosure request forms available.

Asking for disclosure on the record saves you the time/trouble of sending the request through registered mail (or dropping it off), and the JP (and I guess everyone else there) is a witness to the crown having been served. Even if they ask you to do it later, it doesn't matter (provided that you actually do it later) because your intentions to ask for disclosure have gone on the record.

Another thing, the crown may try to pressure/intimidate/coerce you into accepting a plea-bargain at the time, but this is standard practice in the interest of (the court's) time and money.

0.75) The officer made a mistake on the ticket! Can I get it thrown out?
Only very serious mistakes will get you off the hook:

-Missing signature on the information (Justice or the informant)
-No date
-No name for the defendant
-No name for the officer
-No location given for the offence
-No offence indicated or none known to law
-Information sworn after the end of the limitation date
-Failing to properly identify offence that accused stood charged with

A common misconception is that the 'year' field on the ticket is for the model year of your car. This is incorrect - The 'year' field is actually the year of expiry on your license sticker.

If the officer spells your name wrong, that will not get you off the hook unless it is seriously misspelt. The test in such a case is whether a typical reasonable defendant reading the misspelled name would say "This is not me" or "This is me, but there is a mistake in the spelling of my name".

If an officer made a non-fatal error on your ticket (i.e. one that won't get your charged dropped),

you can still use it to your advantage during cross-examination. A mistake on the ticket will help you to establish reasonable doubt in the officer's evidence and testimony.

0.875) What qualifications are required to be a Justice of the Peace?
This may or may not surprise you, but **no legal background is required to be a Justice of the Peace**. Some of them may have legal backgrounds, or at least experience as crown prosecutors, but the position of "Justice of the Peace" is by appointment (I'm not sure who appoints them...Attorney General, I'm guessing?). Justices do receive training, but it is not unusual for Justices to make judgements that are unfair (in the legal sense), and why appeals to a higher court are sometimes necessary.

0.9375) How long does it take to receive a trial notice?
Usually, you should have received a trial notice around 3 months after filing a notice of intention to appear (court date request form). Sometimes, you may receive it sooner, sometimes you may receive it later. If you do not receive one by the 3-4 month mark, you should definitely **call the court house** to find out why. If you do nothing, it is entirely possible that your request was sent out, but got lost in the mail and you missed your court date (in which case, you would be convicted).

1) If your trial date is more than 8 months away from the offence date, and your court date is more than two weeks away, you can motion for a stay of proceedings based on a violation of your Charter Rights (Section 11b: to be tried in a reasonable amount of time) based on the case of R v. Askov. You must file a "Notice of Constitutional Question" form to the crown, The Attorney General of Ontario, and the Attorney General of Canada. This lets the court know that you intend to dispute the charge with a charter claim. You must do this more than two weeks (15 days or more) before your court date. If mailing the forms, again, be sure to use registered mail. Once you have submitted these forms, go to your originally scheduled court date. If you don't submit these forms, your motion will be denied, regardless of the amount of time since your court date.

Notice of Constitutional Question form:
Sample from e-laws.gov.on.ca
Sample from FYST

At your court date, when you are called, you must immediately motion for a stay of proceedings based on your section 11b charter rights (and explain why you feel your section 11b rights have been violated). You must make this motion pre-plea (i.e.: before you have plead guilty/not-guilty). If your motion is accepted, this will get you off the hook right away. Note that you will have a lot more difficulty proving your case if changed your court date without a good reason. If your motion is denied, you will have to proceed to trial.

I will point out that this is not a black and white deadline. It's not like, after exactly 8 months, your case will automatically be dropped. The Askov ruling was way back in 1990, and a lot of things have happened since then. Generally, the 8-month 'deadline' is more of a guideline than an

actual deadline. For example, in cases where there is a lot of evidence to go through, it is not unusual for trials to be scheduled more than 8 months from the offence date. Like every motion you make, you have to be able to give reasons why your motion should be accepted. You could argue that for something as simple as an HTA violation in which there is very little evidence or paperwork, an 8+ month wait time is unacceptable. Generally, the further your court date is scheduled past the 8-month marker, the better and easier it is to have it dismissed on a charter claim.

The ruling that 'superceded' R. v. Askov is R. v. Morin. Essentially, to show that your section 11b rights have been violated, the following are considered:
1. the length of the delay; (you have to show that the length is unreasonable)
2. waiver of time periods; (did you waive your section 11b rights?)
3. the reasons for the delay, including
(a) inherent time requirements of the case, (some cases have a huge amount of evidence to go through)
(b) actions of the accused, (did you cause delay in any way? changing court dates, etc.)
(c) actions of the Crown, (did the crown cause delay in any way? fail to give disclosure, changing the court date, etc.)
(d) limits on institutional resources, and (if everyone is waiting 1 year for their court date, a 1 year wait time might not be seen as unreasonable).
(e) other reasons for delay; and
4. prejudice to the accused. (have you suffered any prejudice as a result of the delay?)

If you are serious about making this motion, you should read the ruling here, starting from page 787 Also, you should definitely be prepared to go to trial the same day, just in case your motion is denied by the JP. I'll say again that there is no exact time frame after which your rights are considered violated. It's pretty much up to the discretion of the JP (influenced of course, by how convincing your arguments are, as well as whether or not the JP is having a good day), although I suppose you could appeal the decision if the ruling is not in your favour and you really feel that your rights have been violated.

2) If your trial date is less than 8 months from the offence date, and it is not for another two or three weeks, it is too late to ask for disclosure. Instead, call the courthouse and ask to motion for a change of court date. They will give you a court date where you show up and make an appearance and tell the JP why you can't make your original court date (just say your legal representation can't show up on that date, or any other reasonable excuse). If your motion is denied, you will have to show up on the regular court date.

3) If your trial date is less than 8 months from the offence date, and is more than a month away, you can just go ahead and ask for disclosure.

4) If your trial date is very soon (less than two weeks), it is too late to motion for a change of

court date. Go to your original court date. Pick an option from the 'Options on your court date' list.

a) If your trial date less than 8 months away from the offence date, and you have not received full disclosure, ask again. If you have already asked twice, go to iv)

b) If you have received full disclosure, choose from "Options on your court date".

i) The officer is not present. Ask the crown if their witness is present. **I have seen all too many times people who accept plea-bargains when the cop is not present.** If the officer doesn't show up, your charge is automatically dropped. The crown has no witness to back up the charge and would lose in a trial. You win.

ii) You have taken too many days off work, know you are guilty, and just want it to be over: Plea-bargain with the crown. Basically, you just go up to the crown prosecutor before court (show up at least 15 minutes early) and they'll usually try to 'cut you a deal' to save everyone's time (although not necessarily your wallet or driving record). This is typically what those shady "x-copper" type places do. Read the fine print of their definition of 'win', and it's usually just classified as a reduction in fine, which you could get on your own without their help and without paying their fee. This is okay if you can't make it to the courthouse for whatever reason, but going with them and assuming that they'll 'do their best' to have the charges dropped is silly, unless you have a clearly written contract stating that they will take it to trial, and are prepared to sue them if they don't. Then, you will plead guilty to the (usually) lesser charge, and be done with it.

iii) Tell the crown that you didn't realize you had to ask for disclosure, and would like to ask for an adjournment to do so. They will usually oblige, in which case, ask for disclosure and . If not, you have two options. If you want to plea bargain, read ii). If you want to take it to trial, read v). Depending on the case, it is often possible to go to trial and win without disclosure.

iv) If you haven't received disclosure and you have asked at least twice, you can ask the JP for a stay of proceedings based on the fact that the crown hasn't provided you with disclosure. You will have to show that you made every reasonable attempt to obtain disclosure, but that the crown was being difficult and uncooperative. It is up to you to show that the crown was not acting in good faith.

Generally, it is far more likely that you will be granted an adjournment (rescheduled court date) instead of a dismissal. However, it is still possible to get a dismissal if you are convincing enough. Clearly state your reasons asking for a dismissal and if the JP is in a good mood, it may be granted. Show how you did everything properly, showing your well documented interactions

with the prosecutor's office, and through no fault of your own (it was completely the fault of the prosecutor's office), you did not receive disclosure. Things that also work effectively are the fact that you had to take time off work and are losing income, the prosecution has wasted both the court's time and money (as well as your own), and this is unreasonable. You want to come across as firm, but deferential to the JP. You definitely do not want to come across as whiny or overly demanding, because in the end, it is completely the JP's decision.

If your request is granted, you are off the hook. If not, the JP may instead offer you an adjournment to get full disclosure. If the JP does not offer you an adjournment, you must motion for one immediately after your first motion (to have the charges stayed) is denied. Finally, if both your motions are denied, you can go to trial and if you don't like the outcome, you can file an appeal (the trial was unfair because you weren't able to get disclosure).

I will also point out that sometimes (rarely), the prosecution/cop will wait until the day of the trial to give you disclosure. DO NOT accept disclosure. Tell the cop that this is too late. How can you be expected to prepare a proper defence in the last five minutes before court is in session? In any case, do not accept the disclosure, and motion either for a dismissal based on lack of disclosure, or for an adjournment to get disclosure.

v) Sometimes it is beneficial to speak to the officer before court is in session. I showed up early once, spoke to the officer, and he agreed to drop the charges after I explained my situation to him. Of course, this is the exception, not the norm, and you can't count on the officer being nice to you. In any case, pick from "Options for taking it to trial"

vi) Procedure on your court date before trial
Please also read v). On the day of your trial, show up to the courtroom a few minutes early. The crown prosecutor always has everyone 'check in' with him/her so that they can determine what everyone's intention is (guilty, not guilty). This is to streamline the process. Anyone who pleads guilty/guilty to a lesser charge gets scheduled first, because it only takes a minute to say "GUILTY, PAY UP SUCKER!" You will usually see paralegals (x-copper, points, etc.) go first, either ones who were formerly cops, or ones who kiss a lot of (ooops). Also, any case in which the defendant is pleading not-guilty and the officer is not present goes first, because it also takes even less time to dismiss the charge based on a no-show cop. This is also done for those lazy cops who don't want to stay for the whole court date. If all cases for an officer have decided to plead guilty, the officer usually just leaves because they don't need to take the stand.

My boyfriend actually tricked the prosecution into dropping a charge because he said he would plea-bargain. The cop left, then when he was called up, he said he was pleading not guilty, and the crown had no witness to go to trial. The other cops in the room tried to go find the missing officer, but the JP was like, "No witness? Case dismissed! NEXT!!" The prosecutor was pretty steamed, as were all the cops. It was a beautiful moment

Anyways, when you go up and tell the prosecutor your intention to plead not guilty, they will get angry, confrontational, and even threatening. However, it's all a big act, so just ignore it and

remain firm in your intention to plead not guilty. They do this on purpose, because they are trying to save time by making everyone plead guilty. The fewer trials they have to go through, the sooner they can get out of there. It is just a big act, and it's actually pretty funny to watch.

It is also possible that if many people go to trial, there may not be enough time for everyone, and be scheduled on another day. There is nothing that you can do, unless this rescheduled court date is pushed back past 8-months, in which case, you will want to read 1).

vii) If your trial date is more than 8 months away from the offence date, and you were not able to make a motion beforehand (and you want to), on the day of your trial, plead not guilty. Go up to the stand when you are called, and in one breath (before the prosecutor can say anything), say "Good morning/afternoon your Worship, My name is X, and I would like to motion for an adjournment to make a Charter claim based on my Section 11b rights." You may be asked to explain why you feel you need to make a charter claim, in which case, read 1). If your motion is denied, you will have to go to trial.

A) If you have entered a plea of 'not guilty' and are taking it to trial, what constitutes a valid defence? This depends on what kind of ticket you are fighting. There are basically three categories of offences, which are:

-**Absolute liability offences** are offences in which the prosecution only has to prove that you committed the offence for you to be found guilty. The defence of "due diligence" does not apply, and the mental state/intention of the accused is irrelevant. The primary way to defeat such a charge is to cast reasonable doubt on the crown's evidence. Speeding is an example of an absolute liability offence. For example, If proven beyond a reasonable doubt that you were speeding, you will be found guilty, regardless of your intent (or lack thereof) to speed. The more exotic defences for absolute liability offences include automatism, duress, necessity, insanity, *de minimis non curat lex* (the law does not concern itself with trifles), self-defence, and act of God  These 'exotic' defences can apply for any offence, including much more serious criminal offences.

-**Strict liability offences** are offences in which the prosecution does not have to prove your intent for you to be found guilty, but allow for a defence of "due diligence". That is, a valid defence to a strict liability offence would be that you did all that was reasonably possible to avoid committing the offence, but it happened anyways. This takes into consideration what a 'reasonable person' would do in such a circumstance. For example, disobeying traffic signs is a strict liability offence.

-**Full *mens rea* (translated from latin as 'guilty mind') offences** are offences in which the prosecution must prove your intent to commit the offence. For example, evading police, is an example of this type of offence. If the prosecution cannot show that you were of a 'guilty mind', you cannot be found guilty. Driving Dangerously, or Willfully avoiding a police officer are examples of this offence. The crown must show that your actions were not only dangerous, but also done intentionally.

The more exotic defences mentioned for absolute liability are applicable to the other categories of offences and could be used in traffic court. However, they are more difficult to prove in court, and some of them require expert witnesses. For example, if you plead insanity, you may require a psychiatrist to prove your mental state at the time of the offence.

B) Defence of Necessity

The defence of necessity can be used as a justification for almost all offences. Two common offences in which this defence is used include (but are not limited to) speeding and running stop signs/red lights. In the case of R. v. Perka, the Supreme Court outlined the four criteria for using this defence:

-a) There must be 'clear and imminent peril' calling out for action without deliberation
-b) There must be no reasonable legal alternative to the illegal act
-c) The harm inflicted by the illegal action must be less than would be present if the 'clear and imminent peril' were manifested
-d) If the harm which forms the basis for the defence was clearly foreseeable and avoidable at an earlier time without any illegality, the defence is unavailable.

For example, speeding might have been justified if you were merging on the highway, the lane was ending, an 18-wheeler was barreling down behind you, the cars weren't letting you in, and there was no shoulder to stop on. If you had stopped, you would have been rear-ended by the truck, and if you hadn't sped up to merge, you would have run out of lane and been run over by the 18-wheeler.

C) Fighting a speeding charge

Because speeding is an absolute liability offence, it has very few defences available to it. Necessity is an option, but difficult to use. Generally, the only way to get out of a speeding ticket will be to show reasonable doubt in the testimony and evidence of the prosecution. What does this mean? Basically you have to show that there was a reasonable possibility that you may not have been the one who committed the offence, even though you were the one that was pulled over. This is very difficult to pull off in practice. The best thing to do is to speed intelligently so as to not get speeding tickets, but sometimes that just doesn't work.

If you go to trial, you will be given the chance to cross-examine all the crown's witnesses (usually only one officer). This is where the hard part begins. You will want to cover as many possibilities as you can, because the more doubt you can cast, the better your chances of getting off the hook. Things you will want to bring up during cross examination:

-Other cars on the road (could the officer have pulled over the wrong car?)
-How many lanes on the road (could the radar reading have come from a car in another lane, or even a car going in the opposite direction?)
-Calibration of the Radar unit or other speed-measuring device (was the device properly calibrated?)
-Possible interference to the speed measuring device (for example, neon signs are one of many

things that can interfere with radar)
-Clerical errors on the ticket (If the officer made mistakes writing down information on the ticket, couldn't he be wrong about other things too?)

Ask your questions in a 'sneaky' way. For example, if you want to cast doubt as to who was responsible for the radar reading, do NOT do this:

Q. Could the radar reading have come from another car?
A. No, I am certain that it picked up your car.

Screwed. Instead, ask in the following way:

Q. Officer, can your radar unit distinguish between targets or directions?
A. No (If he says yes, he's probably lying...units that can cost a ton, but in any event, you should have asked for the make and model of the unit when you made your disclosure request).
Q. Is it not possible then, that the reading generated may have come from another car?
A1. Yes.
(A2. You may be unlucky and get an "Unlikely", but that's still better than the first scenario.)
(Q. But that means it is still possible, correct?)
(A. Yes.)

You get the idea. I can't stress enough how important it is to properly phrase your questions. **You always want to force the officer to answer the question in your favour.**

I'll add more to this section the next time I am bored at work, but there are many more things that you can cover. The FYST website has some good pointers and tips.

D) Fighting a careless charge
Careless charges are often laid when the officer doesn't know what charge to give, or wants to overcharge (knowing that it will be plea-bargained to a lesser offence in court). For example, if you went into a corner too fast and wiped out, if an officer arrives, they may slap you with a careless charge. As usual, the burden on the Crown is proof beyond a reasonable doubt that your actions were careless. Unless you can show that what you did was without negligence or fault on your part (either through the crown's evidence, or your own testimony), a conviction is likely. The defence of due diligence applies.

A common occurrence is for the officer to lay a careless driving charge after the fact (i.e. the officer wasn't present at the time, and only arrived after the incident). If this is the case, you are in good shape. If it was a single vehicle accident (ie: no other people involved) and there are no other witnesses, you are in excellent shape. In this case, the only evidence against you is indirect or circumstantial evidence (evidence which was not witnessed first hand, but from which logical inferences can be drawn - e.g.: you go to bed, and wake up with snow on your lawn. You now have circumstantial evidence that it snowed last night). If there is only circumstantial evidence against you, the court follows the rule in "Hodge's Case" (an old English case). This rule requires that, before the court can find the defendant guilty, it must be satisfied that the circumstantial

evidence must be such as to leave no reasonable explanation but that which indicates the guilt of the accused. In plain english, when the evidence against you is purely circumstantial, you can't be found guilty if you have a reasonable excuse/explanation for what happened, and the evidence does not contradict your explanation.

An example: It is winter, and you you rear-end someone. The officer arrives at the scene, and gives you a careless driving charge. There are no witnesses, and the court did not subpoena the other driver to testify against you. When you take it to court, the only evidence against you is circumstantial (the officer's testimony - the officer arrived after the incident). You plead not-guilty, and give your testimony saying that you saw the car in front of you stop suddenly, you applied the brakes as hard as you could, but there was ice on the road, and you still ended up hitting the other car. In this case, the evidence against you is purely circumstantial, and you have offered evidence which supports a rational alternative conclusion to the careless driving charge.

Careless driving is a kind of nebulous charge - the wording in the HTA is very vague, so it is not possible to define what exactly constitutes careless driving, and what doesn't ("without due care and attention or without reasonable consideration for other persons using the highway"). Just because you have been charged with it, does not mean you are guilty. The amount of case law on careless driving charges is vast, and it should be easy to find similar cases/cases to support your situation.

An addition, from an earlier post regarding fighting a careless charge:

Even if a collision ocurrs as a result of events under the direct control of the motorist, that does not guarantee conviction. Weather can be a valid excuse for escaping convction from a careless charge.

Consider R. v. Smith (1961, 130 C.C.C. 177 (B.C. Co. Ct.)) in which the defendant was unfamiliar with the area in question. He had been driving along a poorly lighted narrow road on a dark night when he crashed into the retaining wall of a river dyke beside the road (and was charged with careless driving). The only evidence against him was the fact of the accident itself. The court held that this evidence was insufficient to support the charge, and that it was impossible to say that the mere happening of the accident gave rise to a presumption of lack of due care and attention in the circumstances.

Consider Masters ([1980] Ont. D. Crim. Conv. 5525-07 (Co.Ct.)), in which the accused emerged from an underpass, where the roadway was wet to an icy road surface. The driver lost control of the vehicle, collided with a light standard, and was charged with careless. The accused was acquitted in court.

Also consider R. v. Johnson (1983, 45 N.B.R. (2d) 371 (N.B. Q.B.) in which the accused had dropped a cigarette on the seat and, while attempting to put it out, drove on the wrong side of the road causing a collision. On appeal, the conviction was dismissed.

Another one: R. v. Hall (Unreported, October 12, 1979, Ont. Dst. Ct. - Street J.) involved a defendant who was following a woman who stopped to make a turn onto a side street. When the

driver stopped, the defendant's car came into collision with her because he was unable to stop in time. At the time, the weather conditions were adverse. It was snowing and the streets were slippery. The defendant saw her vehicle when he was a long way back. He saw her turn signal and then her brake signal and tried to stop, but was unable to do so. On appeal, the Judge found that he could not be satisfied beyond a reasonable doubt that the defedant was driving without due care and attention as he had seen the car and stated that he saw it a long way back. He may have been driving carelessly, but it is equally possible that he had simply been unable to stop because the street was slippery and that through no fault of his own, he slid a long way. The conviction was set aside.

While it is true that "best intentions" alone are not a valid defence, attempting to carry out those "best intentions" does constitute a valid defence, provided that those "best intentions" are what a typical reasonable person would have done in the same situation. This is known as the defence of "due diligence," and it is is a valid defence to a careless driving charge (among other charges). If you can show that you did everything that a reasonable person could have been expected to do to avoid the accident, and after all that, it still happened, then you are entitled to an acquittal. Your own testimony is usually sufficient, barring any contradictory evidence (circumstantial or otherwise) - e.g.: you said you tried to stop as hard as you could, bu there were no skid marks to indicate this.

The law does not require perfection. Mistake of judgement does not necessarily constitute careless driving. Drivers are held to the stadard of what the "ordinary prudent person would do in the circumstances". This standard is always shifting, depending on road, visibility, weather, and traffic conditions that exist or may reasonably be expected. Consider this passage from R. v. Beauchamp: "The law does not require of any driver that he should exhibit 'perfect nerve and presence of mind, enabling him to do the best thing possible.' It does not expect men to be more than ordinary men."

E) Fighting a failure to stop charge Coming soon

F) Procedure on your court date during the trial
From the FYST website: (When court is in session)
-Do not talk in the spectator area
-Do not wear a hat
-Stand up when the judge enters or leaves the courtroom
-Bow to the judge when you enter or leave the courtroom
-Always address the judge as "Your Worship" or "Your Honour". Don't call him/her "you"
-Show your respect. Traffic court is pretty informal, but that doesn't mean you can act like an idiot. Basically, the JP determines your fate. If you are a jerk to the JP, you're basically screwed.

Paraphrased from the FYST website:
When it is your turn, the crown prosecutor will call your name, at which point you go up to the front (it's usually to the left of the crown prosecutor) and say your name.

If you have chosen to plea-bargain, the prosection will usually ask the JP if the deal made is acceptable. If yes, you will plead guilty to the lesser charge. For example, if you got a "Fail to stop, stop sign" ticket, it might be plea-bargained down to an "improper stop" charge, in which case you would plead not guilty to the first, but guilty to the second. The JP will ask if you are aware thta you are waiving your right to a trial by pleading guilty, and that you understand your decision and the consequences. This is because pleading guilty to a charge you do not fully understand is an obstruction of justice. Once you plead guilty, the JP will then give you a chance to explain why you did what you did. This only affects how much time you have to pay (and how much you pay, for those variable fine offences), and not the fact that you are guilty. The JP will then decide how much time you have to pay (and what the fine is if it's a variable fine offence) and that's it. You are guilty, so pay up!

If you have chosen to go to trial, the prosecution will state that they are either ready to go to trial or not. If not, the JP will say that your charge has been dismissed, and you are free to go. You can either leave the room, or stay and watch. If the prosecution is ready to go to trial, then the offence with which you are charged will be read aloud by the clerk, and they will ask you how you plead. Say, "Not guilty, Your Worship," and take a seat.

The prosecution will then have the cop take the stand and tell his side of the story. After the prosecution is done, you will have a chance to cross-examine the witness. If there is more than one witness for the crown, they will be called after you are done your cross-examination. This repeats until the crown has no more witnesses.

Once you are done cross-examining the witness(es), it is now your turn to give your testimony, and/or to call any witnesses you may have. THIS IS OPTIONAL, and you CANNOT BE FORCED TO TESTIFY AGAINST YOURSELF. Being forced to testify against yourself is a violation of your charter rights (section 11c). Even something informal can be a violation of your rights. For example, if the JP asks you, "Did you speed?" you do not have to answer because you would be testifying against yourself. If you are fighting a speeding ticket, it is usually best not to give your own defence. This is because the crown prosecutor will have a chance to cross-examine you and cast reasonable doubt on your testimony and credibility. For some charges (such as careless driving, fail to stop - amber light, etc.), you WANT to give your own defence because it is the easiest way to win.

After you are done testifying/calling your witnesses, or if you skipped that part, it is now time to give your closing argument. The crown will give a closing statement with reasons why you should be guilty, and you should then give a closing statement with reasons why you should be innocent. Don't introduce new arguments, and keep it short, but concise.

Last comes the verdict, followed by sentencing if you were found guilty.

G) Basic Rules of evidence
From the FYST website:

There is nothing really you can prepare for examination-in-chief, except to prepare making objections immediately. Don't be afraid to make objections, even if it does not seem to have a strong reason. You might have overlooked something that the judge has noticed, and if you don't object, it will automatically be considered accepted by you. Study the rules of evidence carefully, and compile a list of possible objections in front of you so that you can quickly refer to them during examination-in-chief. That's why you have to come to court as a spectator to see how witnesses give testimonies and the possible violations they might make.

Here is a list of common violations witnesses and/or prosecutors might make when testifying/questioning:

Hearsay:
Witnesses cannot testify something that is beyond their personal experience or knowledge. They cannot testify something that is said by another person, or else that person has to come and testify what he said. For example, if the cop says "the computer operator told me the defendant's driver's license was under suspension", then you immediately stand up and call "Objection! Hearsay!". The computer operator has to come and testify, or the cop must produce certified printout to support his claim, otherwise the evidence cannot be admitted.

Lack of foundation:
The cop cannot testify something that has no basis on. He cannot comment on the accuracy of the speedometer of his cop car, without a calibration certificate, for example.

Speculation:
This is equivalent to a wild guess. The prosecutor might make a statement saying "the defendant knew that he was speeding anyway." Then you should immediately object because the prosecutor cannot be sure what you know.

Irrelevant:
If the cop says something that is irrelevant to the charge, or he mentions some other offences that weren't written down, object. For example, if you were charged speeding, then the cop says in court that you were not wearing a seatbelt at that time, it is irrelevant unless he also charged you with a seatbelt violation.

Immaterial:
Similar to irrelevant, but the evidence is somehow related to the charge, only that it is too remote to be of any use. For example, your past driving record.

Non-expert witness:
If the cop says something that is beyond his professional skills and training, object to his testimony. e.g., if he says "the defendant was crazy when I pulled him over", then you should object because he is not a psychologist. "His car's wheels were out of alignment", object because he is not a mechanic.

H) More to come at a later date.