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April 17, 2009

Via email: JUS.R.MAG.CSD.POASstreamliningReview@ontario.ca

Raghad Hussami
Information Coordinator
Criminal /POA Policy & Programs Branch
Court Services Division
Ministry of the Attorney General
700 Bay Street, 9th Floor
Toronto, Ontario M5G 1Z6

Dear Raghad Hussami,

RE: Provincial Offences Act Streamlining Review

1.1 Developing a more effective early Resolution Process

For POA offences, defendants should continue to be given the following options. Option iii allows "mailing or faxing" a Notice to request trial as opposed to attending the courthouse in person:

- i. Pleading guilty and pay the set fine.
- ii. Request a meeting with the prosecutor by mailing a notice to the court office
- iii. Request a trial by "mailing or faxing" a notice to the court office

To avoid conflicts with scheduling appointments, prosecutors will communicate preset times of availability. One suggestion is prosecutors to block off certain times of the week for the purpose of these meetings. The defendant will know that the prosecutor is only available on preset times and/or preset days within the week. These preset dates and times can be communicated on the ticket, court room and on internet sites. If the defendant is unable to make the appointment, they would either send their representative to attend or cancel the appointment by a certain date. If the defendant misses a set appointment without any notification to the prosecutor, the prosecutor can request the matter to be set down for trial. Costs can be asked for at the time of Trial. This also gives the defendant an opportunity to explain their absence. Missing an

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appointment with the prosecutor should not result in an automatic conviction nor should it suggest that the charge is not being disputed. Although the prosecutor may have good intentions, it is the role of the Justice of the Peace to preserve the judicial system's integrity and impartiality by eliminating bias and prejudice.

It is wrong to convict a defendant without the Hearing.

(2) Making the early resolution process available throughout the province

The consultation paper states:

“However, the consistent application of an early resolution model across the province might increase access to justice for Ontario defendants by ensuring that all defendants have accessible opportunities to resolve charges out-of-court”

Without any statistics to support the above statement, we will assume for the purpose of this letter, it is a true reflection on how the present early resolution model is working. However in Toronto given its population and diversity, closure of the only Night Court suggests application of an early resolution model might *not* increase the access to justice.

As indicated earlier, our response assumes the above statement as an accurate and thus concludes an early resolution process will minimize court resources. There is a shortage of Justices of the Peace in many areas within the province; therefore focusing on an early resolution process does appear prudent. But is there true access to Justice if the defendant does not understand the process and appears in a negotiation setting with the prosecutor on one side and him/herself on the other side AND there is no obligation for the prosecutor to inform the defendant, that may not fully understand the gravity of the issues before him/her, to seek legal advice from a Paralegal or Lawyer? No.

Considering the potential savings to municipalities and the shortage of Justices of the Peace throughout the province, an early resolution process should be available consistently throughout the province AND the outcome of the early resolution process needs to be directed to a Justice of the Peace to ensure impartiality.

(3) Walk-in guilty pleas

Walk in guilty pleas should be available for areas where early resolution is not available.

(4) Electronic meetings

When it is practical, defendants who live outside the area should be permitted to attend meetings with the prosecutor by teleconference or videoconference and this service is

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available for all types of offences. Hearings need to be in person.

(5) Permitting defendants and prosecutors to submit plea resolutions or submissions to a justice of the peace in writing or by teleconference or videoconference

Defendants who have reached a plea agreement regardless how obtained should appear in person or have a Licensee or person presently exempted (i.e. spouse) appear before a justice of the peace to enter the plea.

1.2 Enabling the use of Audio and Video Appearances

Witnesses to submit evidence by means of video conferencing or by audio should not be allowed. Not only is this a form of hearsay evidence, body language or reliance of notes or collaborating evidence cannot be easily determined.

1.3 Improving the Delivery of Court Notices to Defendants

The defendant or their paid representative needs to ensure the court records are up to date with current contact information. If a defendant moves and they are within a POA process, it would be prudent for them to update the court their change of address.

One suggestion to avoid confusion within the public, is for The Ministry of Transportation and the Provincial Offences Office to reach a best practice or strategy to educate the public that updating their drivers licence does not update the court records. This may be accomplished through the use posters at Drivers license locations as well at Provincial Court houses.

We believe this is an educational issue as opposed to legislation issue for the defendant to update the court records of a change of address.

2. Enhancing the Enforcement of POA fines

It is common to see many fines ordered by the courts or Judgments, in the case of civil matters, ordered by the Courts to go unpaid. Creditors, whether it is the Municipality or province or an individual need to rely on the Courts to enforce payment. Presently in the Superior Court of Justice, Small Claims Court a Judgment is automatically registered on the credit bureau (Equifax /TransUnion) against the defendant. This is accomplished electronically and there is no need for an independent 3rd party i.e. collection agency to register a debt with a credit bureau. The Provincial Court Office can register unpaid fines against a person's credit bureau.

The defendant should NOT pay the costs of collections. The courts limits Costs awarded and this needs to be continued. People should not view going to court as a risk of being hit with excessive costs. Defendants may choose to fight a charge or a

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ticket for a number of reasons. The Provincial court role is to ensure justice is carried out.

The present resources available through the Provincial Courts already send a message that fines need to be paid. You can lose your licence if a fine goes unpaid or if the debt is transferred from Provincial Court to Superior Court- Small Claims Court for enforcement, the debtor can be found in contempt of court and jailed up to 40 days by ignoring court dates i.e. a Notice of Hearing for a debtor examination

The Provincial Offences Office will need to make a business decision whether to hire a Paralegal/Lawyer to proceed with enforcement utilizing the court forms and forum or a collection company to collect through their means of phone calls and writing letters.

2.1 Adding Defaulted Fines to Municipal Tax Bills

Unless the fine is related to the house (i.e. a fine imposed for not cleaning up debris) the fine should not be attached to the Municipal Tax Bill. Just like a person should not lose their drivers licence for not paying their municipal taxes. A speeding ticket should not be attached to a person's property tax bill; a fine involving any other matter should not be attached to the Municipal Tax Bill. More than likely there are several people living under one roof. A spouse should not face the possibility of losing her home or their children's home due to unpaid fines.

Plus there is already enforcement means available such as filing a writ of seizure and sale of property.

2.2 Making POA Fine Payment a Condition for issuing Municipal Licences or Granting Municipal Contracts

Municipalities to enforce payment of a fine need to be limited where the fine is directly related to the business licence.

If a restaurant is fined for unhygienic practices, their restaurant licence should not be renewed unless all fines related to the unhygienic conditions are paid. If the restaurant is following all regulations than their restaurant or their employees should not be jeopardized for an unpaid speeding ticket.

2.3(2) Licence Plate Denials

License Plate denials should be issued for offences related to the use of the car i.e. parking tickets and matters under the Highway and Traffic Act.

A vehicle is not a luxury item but a necessity for many people. Plus there are real social concerns of increasing the number of unlicensed drivers or uninsured vehicles if

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payment of other POA fines is a condition to licence renewals or plate renewals.

2.4 Improving Access to Civil Fine Enforcement Proceedings

Provided the fine is imposed through a Hearing process, the 2 year limitation period for filing a certificate of default should be eliminated.

An analogy would be the Ontario Landlord and Tenant Board. Orders issued under the LTB do not expire for collection purposes. The order expires in 6 months for the purpose of enforcing possession though the Court Sheriff's Office however there is no expiration date to enforce that Order for unpaid monetary amounts. They and can be transferred to small claims at any time. Once transferred, there is limitation periods imposed through the small claims court rules i.e. a writ needs to be renewed every 6 years.

The consequences of delay for the debtor is interest accumulates on the debt plus possible imposed court costs, risk of jail if court dates ignored.

The consequence of delay to enforce payment of a fine is potential added costs to locate the defendant/debtor.

2.5 Providing Relief from Financial and Other Hardship

The Justice of the Peace needs to have discretion to a reduced fine or an extended payment or elimination of a fine. We suggest that this discretion extend any time until the fine is paid. The Justice of the Peace can revisit the fine 2 years afterwards if a defendant experiences new hardships that were unforeseen.

3. Simplifying Procedures and Making More Efficient Use of Available Resources

3.1 Enhancing the Powers of the Clerk of the Court

The clerk should be able to adjourn proceedings where the parties have filed a mutual agreement to adjourn a first trial date.

(2) Permitting the Clerk of the Clerk to rescheduled Initial Hearing Dates

The clerk should NOT have the authority to reschedule the initial Hearing date. The Hearing date needs to be predictable and not messed with. The defendant and or defendant's Paralegal/Lawyer schedule their appointments around Court dates.

The prosecutor should NOT be authorized to make application to adjourn unless on consent. This process needs to be "perceived" as fair and just. Giving the prosecutor this ability and not the Defendant's Paralegal/Lawyer opens the door for the perception of a biased system. Plus it may be prejudicial on the defendant by increased



delays or other factors depending on the circumstances.

(3) Permitting the Clerk to extend Time for Payment of Fines

The defendants should be allowed to submit their extension requests by mail or fax to the clerk. At this point, the clerk will schedule a meeting with the Justice of the Peace. To prevent potential abuse and to ensure proper repayment of fines, the clerk should not determine who should or should not be given an extension.

3.2 Streamlining Evidence in POA Trials

The difficulty with certified evidence is that the person is not in the court room to be cross examined. Direct evidence through viva voce evidence and challenging that direct evidence through cross examination is the fundamental basis of a fair trial.

Certified evidence should not be used as the sole basis for convicting a person under any circumstances.

3.5 Limiting the Effect of Filing an Appeal

The present demerit point system for convictions should not change.

If we allow the demerit points to remain in place pending the appeal, the accused could have increased insurance rates while awaiting appeal. Even with a successful appeal where the conviction is overturned, the system would create an unjust outcome due to unjust increased insurance rates. The likelihood of retrieving this overpayment is unlikely. In Toronto this appeal process could take two years.

3.6 Increasing Maximum Fines to Reflect Inflation

Fines should be increased to reflect inflation. Fines are in place and used as a deterrent to prevent or curtail a specific action i.e. speeding.

Fines higher than \$500.00 will ENCOURAGE early resolution. The risk in not trying to resolve through early resolution is the uncertainty or possibility of losing at a Trial.

3.7 Reserving Summonses for Serious Offences

Part 1 Summons can be eliminated. Instead notice should be issued by regular mail of the Hearing date. If the defendant fails to appear, the Justice of the Peace may proceed ex parte on another date without issuing the second summons.

3.8 Clarifying when a Ticket is complete and regular

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The POA should not set out the criteria for determining when a certificate of offence is complete and regular. Instead all areas of the ticket need to be legible and complete and accurate. Failing to do either can compromise the effect of that ticket, subject to further scrutiny. Courts decisions have determined criteria for a complete and regular certificate.

4.1 Permit prosecutors to make submissions on fine waiver requests

It should be noted that not every ticket generates revenue. The Justice of the Peace may dismiss the charges, or enter a conviction with a suspended sentence which means a conviction registered with the Ministry of Transportation but no fine is assessed.

A request to waive payment of a fine pending appeal of a conviction makes good sense if the defendant believes he/she should have received a suspended sentence or believes the circumstances do not support a conviction.

Prosecutors should NOT make submissions when a defendant applies to waive the payment of a fine pending appeal of a conviction.

As stated prior, the Justice of the Peace has discretion to lower a fine, impose a repayment schedule or eliminate a fine. The role of the Justice of the Peace is to preserve the judicial system's integrity and impartiality by eliminating bias and prejudice.

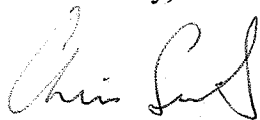
4.2 Mark municipal by-laws as exhibits

The Evidence Act already requires that a prosecutor produce a certified copy of the entire –by-law or an extract of the relevant sections. Exhibits assist in organizing the supporting documents. This should remain as is.

The POA should not be amended to compromise the Evidence Act.

On behalf of the Board of Directors, I thank you for your interest.

Yours truly,



Per:

Dennis Schweitzer, Paralegal
Director, Policy
Paralegal Society of Ontario

