

Provincial Offences Act Streamlining Review

Consultation Paper

January 29, 2009

TABLE OF CONTENTS

- Introduction and Overview3**
- The POA Streamlining Review.....3
- Statutory Framework4
- Consultation.....5

- Issues and Discussion.....7**
- 1. Improving Service to the Public and Access to Justice7
 - 1.1. *Developing a More Effective Early Resolution Process*7
 - 1.2. *Enabling the Use of Audio and Video Appearances* 10
 - 1.3. *Improving the Delivery of Court Notices to Defendants* 11
- 2. Enhancing the Enforcement of POA Fines..... 11
 - 2.1. *Adding Defaulted Fines to Municipal Tax Bills*..... 12
 - 2.2. *Making POA Fine Payment a Condition for Issuing Municipal Licences or Granting Municipal Contracts*..... 13
 - 2.3. *Expanding the Use of Licence Suspension and Licence Plate Denial*..... 13
 - 2.4. *Improving Access to Civil Fine Enforcement Proceedings*..... 14
 - 2.5. *Providing Relief from Financial and Other Hardship* 15
- 3. Simplifying Procedures and Making More Efficient Use of Available Resources..... 17
 - 3.1. *Enhancing the Powers of the Clerk of the Court*..... 17
 - 3.2. *Streamlining Evidence in POA Trials* 18
 - 3.3. *Streamlining Ex Parte Trials*..... 19
 - 3.4. *Authorizing Judicial Pre-Trials*..... 19
 - 3.5. *Limiting the Effect of Filing an Appeal*.....20
 - 3.6. *Increasing Maximum Fines To Reflect Inflation*20
 - 3.7. *Reserving Summonses for Serious Offences*21
 - 3.8. *Clarifying When a Ticket is “Complete and Regular”*22
 - 3.9. *Clarifying Criteria for Assessing the Validity of a Guilty Plea*23
- 4. Other Options for POA Reform.....23
 - 4.1. *Permit prosecutors to make submissions on fine waiver requests*23
 - 4.2. *Mark municipal by-laws as exhibits*.....24
 - 4.3. *Return of seized items*24
 - 4.4. *Permit officers to serve parking tickets by mail in limited circumstances*.....24
 - 4.5. *Clarify the definition of “provincial offences officer”*.....25
 - 4.6. *Authorize filing of informations by electronic means*25
 - 4.7. *Strike out convictions for ticketable offences entered due to administrative error*25

4.8.	<i>Extend the time to appeal convictions for ticketable offences from 15 to 30 days</i>	<i>25</i>
4.9.	<i>Permit extensions of the limitation period for commencing a parking proceeding</i>	<i>25</i>
4.10.	<i>Repeal the requirement that defendants requesting a trial for a ticketable offence be asked to indicate in advance if they want to challenge the officer's evidence.....</i>	<i>25</i>
4.11.	<i>Streamline the process for accepting guilty pleas to substituted charges.....</i>	<i>26</i>
4.12.	<i>Clarify witness reimbursement processes.....</i>	<i>26</i>
4.13.	<i>Provide that a count in an information is sufficient without indicating the precise time that the alleged offence occurred.....</i>	<i>26</i>
4.14.	<i>Permit the clerk of the court to set trial dates after reopenings.....</i>	<i>26</i>
4.15.	<i>Clarify that all defendants who fail to appear at trial for a ticketable offence will be deemed not to dispute the charge.....</i>	<i>26</i>
4.16.	<i>Clarify that appeals must be filed in the court service area in which the conviction was entered.....</i>	<i>26</i>
4.17.	<i>Encourage timely applications for extensions of time to pay fines.....</i>	<i>26</i>
4.18.	<i>Update POA warrant provisions.....</i>	<i>27</i>

Conclusion28

Appendix 'A'i

POA Streamlining Review – Working Group Members i

INTRODUCTION AND OVERVIEW

The POA Streamlining Review

The *Provincial Offences Act* (the “POA”)¹ is the provincial legislation governing the prosecution of provincial offences, municipal by-law infractions, and certain federal laws. Provincial offences are created by a variety of provincial statutes and regulations, including the *Highway Traffic Act*,² the *Occupational Health and Safety Act*,³ and the *Environmental Protection Act*.⁴

Since 1999, the Attorney General has entered into 52 POA Transfer Agreements with Municipal Partners.⁵ These agreements transfer to municipalities the responsibility for administering courts that hear POA matters, prosecuting offences under Part I and Part II of the POA, and collecting fines imposed under Parts I, II and III of the POA.⁶

In the Transfer Agreements, Municipal Partners and the Ministry of the Attorney General (MAG) agreed to explore the possibility of streamlining proceedings under the POA once the last Transfer Agreement was executed. In August of 2006, the POA Table, a committee composed of representatives from MAG, the Municipal Court Managers’ Association, municipal prosecutors and others, formed a provincial-municipal Working Group to conduct a review of the POA, associated regulations and court rules. The Working Group has been asked to make recommendations to MAG and has been meeting regularly over the past year to consider proposals to simplify procedures, reduce demand for court resources, enhance fine enforcement and improve service to the public. Now it would like to hear the views of others interested in POA matters.

The Working Group⁷ is composed of representatives of:

- The Municipal Court Managers’ Association
- The Prosecutors’ Association of Ontario
- The Association of Municipalities of Ontario
- The Ministry of Transportation
- The Ministry of Municipal Affairs and Housing
- The Ministry of Small Business and Consumer Services
- The Ministry of the Attorney General

¹ R.S.O. 1990, c. P.33.

² R.S.O. 1990, c. H.8.

³ R.S.O. 1990, c. O.1.

⁴ R.S.O. 1990, c. E.19.

⁵ Municipal Partners administer courts hearing POA matters in a defined court service area.

⁶ Although they are municipally administered, the POA courts remain part of the Ontario Court of Justice.

⁷ A complete list of Working Group members is attached as **Appendix ‘A’**.

The purpose of the POA is to establish a procedure for the prosecution of provincial offences that reflects the distinction between provincial offences and criminal offences.⁸ Courts have noted that it is intended to establish a “speedy, efficient and convenient method of dealing with [provincial] offences,”⁹ to ensure that technical objections do not impede the arrival of a verdict on the merits,¹⁰ and to encourage defendants to represent themselves at trial.¹¹ With this in mind, the Working Group has aimed to identify options for reform that maintain simple, fair and accessible POA procedures for all Ontarians, including unrepresented defendants.

Statutory Framework

The POA is divided into 10 Parts. Parts I, II, and III govern the initiation of proceedings, and have been the focus of much of the Working Group’s discussion. Parts IV, V and VII through X of the POA set out a number of general provisions applicable to all proceedings (including procedures for arrest, search and seizure, bail, trial, sentencing, appeals, *etc.*). Part VI of the POA creates a special code of procedure applicable to the prosecution of “young persons.”

Part I establishes a simple “ticketing” procedure for relatively minor, non-parking offences, punishable by a fine of \$500 or less. A Part I proceeding is commenced by serving the defendant with an offence notice (ticket) and filing a certificate of offence with the court. Defendants may plead guilty to an offence by paying the set fine and the associated costs and surcharges. If a defendant fails to respond to an offence notice within 15 days or requests a trial and fails to appear at the appointed time and place, he or she may be convicted without a trial. Part I does not provide for incarceration, probation, or sentencing options other than fines, except for certain related consequences for some traffic offences under the *Highway Traffic Act* (*e.g.*, driver’s licence suspension, demerit points, *etc.*).

Part II outlines the procedures applicable to provincial, municipal and federal parking infractions. As in Part I, it establishes a simple “ticketing” scheme intended to reflect the minor nature of these infractions.

The procedures set out in Part III are similar to procedures in criminal matters. A proceeding is commenced against a defendant by an information sworn before a judicial officer, and the defendant appears in court in response to a summons or warrant for arrest. The procedures in Part III are intended to be used for more serious provincial offences (*e.g.*, driving while your driver’s licence is suspended, discharging a contaminant into the environment that causes an adverse effect). The POA prescribes a maximum fine of \$5,000 for these offences; however, many statutes provide for higher monetary penalties. Part III also establishes a broad range of sentencing options, including imprisonment and probation.

⁸ See s. 2.

⁹ *R. v. Jamieson* (1981), 64 C.C.C. (2d) 550 (Ont. C.A. [In Chambers]); affirmed (1982), 66 C.C.C. (2d) 576 (Ont. C.A.).

¹⁰ *Her Majesty the Queen in Right of Ontario (Ministry of Labour) v. Discovery Place Ltd.*, [1996] O.J. No. 690 (Gen. Div.); *Her Majesty the Queen in Right of Ontario (Ministry of Labour v. The Corporation of the City of Hamilton* (2002), 58 O.R. (3d) 37 (C.A.).

¹¹ *R. v. Wells*, [2003] O.J. No. 2025 (C.J.).

Consultation

This consultation paper sets out a number of ideas for reform, which are divided into four categories based on the primary objectives of the POA Streamlining Review:

- 1. Improving Service to the Public and Access to Justice**
- 2. Enhancing the Enforcement of POA Fines**
- 3. Simplifying Procedures and Making More Efficient Use of Available Resources**
- 4. Other Options for POA Reform**

In addition to the procedures established by the POA, there are also POA Rules of Court. The Ontario Court of Justice will be consulted about ideas to streamline and enhance these Rules, including:

- Clarifying and simplifying appeal processes by:
 - Simplifying rules for filing documents;
 - Clarifying rules for dismissing abandoned appeals; and
 - Streamlining the processing of applications for extension of time to appeal.
- Establishing criteria and reviewing procedures for extending the time to appeal;
- Creating rules governing applications for and the conduct of judicial pre-trials;
- Reviewing when POA proceedings should be recorded and when a transcript should be required for POA appeals; and
- Creating rules for serving and filing materials related to constitutional motions.

The Ministry of the Attorney General will also review existing POA costs and fees following the implementation of reforms that result from the POA Streamlining Review.

The Working Group invites your comments on all of the issues raised in this paper or any other issue related to POA procedures or fine enforcement. The potential reforms set out here are intended to generate ideas and discussion, but are not intended to be exhaustive or final. They do not necessarily represent the views of the Attorney General.

Please send your comments or questions by mail or e-mail to:

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Toronto, Ontario M5G 1Z6

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Please respond by March 13, 2009.

After reviewing comments and suggestions, the Working Group will develop a final set of recommendations to be submitted to the Attorney General for his consideration. This may involve sharing some or all of the comments or materials received with other interested parties during and after the review process.

Any personal information in submissions, such as names and contact details (*i.e.*, home addresses and phone numbers, personal email addresses, *etc.*) – in addition to any other information that could be used to identify an individual – will not be disclosed without prior consent. However, records created by individuals acting in a professional capacity (*i.e.*, on behalf of a group, association, business, commercial enterprise, *etc.*) may be disclosed, unless your covering letter states that such disclosure would be harmful and/or prejudicial. If for any reason you feel that specific parts of your submission or specific comments should not be shared with other parties, please indicate this and the reasons why in your covering letter. We will treat this information as confidential to the extent permitted under the *Freedom of Information and Protection of Privacy Act*.¹²

¹² R.S.O. 1990, c. F.31.

ISSUES AND DISCUSSION

1. Improving Service to the Public and Access to Justice

In light of the broad range of statutes, regulations and municipal by-laws that create offences prosecuted under the POA, POA proceedings have an impact on multiple public interests, including road safety, workplace safety, consumer protection, public health and environmental protection. In addition, because these offences proceed through the municipally-administered POA courts, these courts are Ontarians' most common contact with the justice system. There is a significant interest in ensuring that the procedures governing so many offences, and affecting so many people, are as accessible, straightforward and fair as possible.

There are many simple ways that service to the public and access to justice in POA proceedings can be improved. For example, regulations can be made under the *Access to Justice Act, 2006*¹³ to authorize video appearances by witnesses in POA proceedings, the process for updating POA forms could be simplified, and POA tickets can provide better information about the procedures available to defendants. The POA could also be amended to ensure that future developments in technology, designed to provide easier access to the POA process (e.g., e-filing), can be quickly and easily implemented. These are all under consideration by the Working Group.

Other, quite straightforward ways to improve access to justice are canvassed in section 4 below. Your comments about all of these and the following issues will be very helpful to the Working Group.

1.1. Developing a More Effective Early Resolution Process

Currently, a person who receives a ticket has three options: (i) plead guilty to the offence by paying the set fine;¹⁴ (ii) plead guilty to the offence and request a reduction in the set fine before a justice of the peace; or (iii) dispute the charge by requesting a trial.¹⁵

In designated areas of the province, a defendant who chooses to dispute a charge must attend a court office in person to file a trial request.¹⁶ After doing so, he or she has the option of participating in a meeting with the prosecutor to discuss the possibility of resolving the charge, receive disclosure about the prosecutor's case,¹⁷ and narrow the issues at trial. While in some areas this meeting takes place when the defendant attends

¹³ S.O. 2006, c. 21.

¹⁴ In order to be eligible for the less complex procedures available in Part I of the POA, an offence must have a "set fine" established by the Chief Justice of the Ontario Court of Justice. This amount appears on the offence notice (ticket) to ensure that the defendant understands the consequences of the conviction (*i.e.*, that the set fine plus related costs and surcharges will be imposed).

¹⁵ These options may also be exercised on the defendant's behalf by a lawyer, paralegal or other representative.

¹⁶ Municipalities may apply to become designated by regulation for the purpose of requiring defendants to appear in person to request a trial in order to offer them the option to meet with a prosecutor.

¹⁷ "Disclosure" is the process by which prosecutors share the evidence against the defendant with the defendant or his or her representative. It allows defendants to know the case against them and to prepare their defence accordingly.

the court office to file a request for trial, in many locations it is not possible to have a prosecutor available to conduct meetings upon request. In these areas, the defendant must return at a scheduled date and time to meet with the prosecutor.

If the defendant and prosecutor do not agree to a resolution of the charge at this meeting, a notice of trial is delivered to the defendant. If a resolution is reached, the prosecutor and the defendant appear before a justice of the peace to enter a guilty plea and dispose of the charge without a trial. The justice of the peace asks the defendant a series of questions designed to ensure that the defendant understands the charge and the consequences of conviction. This is known as a “plea comprehension inquiry.”

Providing a process to support early resolution of charges, where appropriate, allows valuable court resources to be focused on trials of truly contested matters. Nonetheless, the effectiveness of the existing early resolution process can be undermined in several ways. For example, sometimes a defendant who has requested an appointment to meet with a prosecutor fails to attend the scheduled meeting. Sometimes, the same defendant will fail to attend the subsequently scheduled trial. The possibility of early resolution is lost and publicly-funded court resources are not effectively utilized.

The Working Group has identified several options to strike a balance between making best use of judicial, prosecutorial and court resources, providing an accessible and meaningful early resolution process to defendants, improving service to those charged and ensuring the protection of defendants’ rights and their access to legal process.

(1) Changing the options available to the defendant upon receiving a ticket:

Within 15 days of receiving a ticket, defendants could be asked either to:

- (i) Plead guilty to the offence by paying the set fine; or
- (ii) Dispute the charge *by mailing* a notice to the court office indicated on the ticket;

Defendants choosing option (ii) would be asked to attend at the court office at a scheduled time to arrange a date for trial, with an option to meet with a prosecutor on the day of the appointment. Defendants could therefore discharge their obligation to respond to the ticket within 15 days, but their appointment could be scheduled at a later date. This would provide more scheduling flexibility for court staff and prosecutors and would be more convenient for defendants.

Alternatively, defendants could be asked to exercise one of three options within 15 days of receiving a ticket:

- (i) Plead guilty to the offence by paying the set fine;
- (ii) Request a meeting with the prosecutor *by mailing* a notice to the court office indicated on the ticket; or
- (iii) Attend the court office *in person* to request a trial.

In this case, defendants wishing to dispute a charge would be asked up front to decide whether or not to meet with a prosecutor. Defendants choosing option (iii) would be required to attend the court office within fifteen days of receiving the ticket as they do now in designated areas.

In both cases, defendants who choose to meet with the prosecutor but who do not reach a resolution of the charge would be advised to return to the court administration office after the meeting to obtain a trial date. As a result, only one trip to the courthouse would be required prior to trial.

Defendants would be advised that failing to attend a scheduled meeting (with either the court office or prosecutor) would result in their being deemed not to dispute the charge and convicted without a hearing. Failure to attend a requested trial would continue to result in a default conviction. Defendants convicted in either circumstance would be permitted to apply to re-open their conviction if their failure to attend were through no fault of their own.

- Would scheduling meetings with the prosecutor or court office delay trials?
- Would either alternative result in more requests for trial?
- Which alternative would be the simplest and most convenient for defendants?
- Would it be fair to convict defendants who fail to attend a scheduled meeting with the court office or the prosecutor without a hearing?

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

Currently, municipalities have a choice about whether they wish to implement an early resolution process in their area. Some municipalities may, for example, not have enough resources with which to implement such a process.

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.

- Should an early resolution process be available consistently throughout the province or should municipalities maintain the flexibility to decide whether it is appropriate locally?
- Should an early resolution process be available for all ticketable offences, or be limited to certain types of offences (e.g., speeding)?

(3) Walk-in guilty pleas

Defendants may currently plead guilty to an offence while requesting a reduction in the set fine on the ticket by appearing before a justice of the peace on a 'walk-in' (unscheduled) basis. This process is convenient and accessible for defendants who may need a reduction in the fine amount for financial reasons, but it requires extra judicial resources to be available upon request, rather than on a scheduled basis.

- Should this process continue to be available (i) in areas where an early resolution process is in place or (ii) in areas where early resolution is not available?

(4) Electronic meetings

The requirement to attend in person to meet with the court office or a prosecutor may be inconvenient to defendants who are charged with an offence in an area other than their place of residence.¹⁸

- ❑ Should defendants who live out of the area be permitted to attend meetings with prosecutors or the court office by teleconference or videoconference?
- ❑ Should electronic meetings be available consistently throughout the province or should municipalities have the flexibility to decide whether it is appropriate locally?
- ❑ Should electronic meetings be available for all ticketable offences, or be limited to certain types of offences (e.g., speeding)?

(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 following a meeting with the prosecutor or who wish to plead guilty to an offence while requesting a reduction in the set fine on the ticket must now appear in person before a justice of the peace to enter their plea. This allows the justice of the peace to ensure that the defendant's guilty plea is voluntary, unequivocal and informed. Sometimes defendants must wait to see the justice of the peace.

- ❑ Should justices of the peace be authorized to receive defendants' guilty pleas in writing or by teleconference or videoconference (i) where a defendant has reached a resolution with a prosecutor or (ii) where a defendant is seeking a reduction the set fine?
- ❑ Should justices of the peace still be authorized to require a defendant to appear before them in person where they have concerns about the validity of a guilty plea?

1.2. Enabling the Use of Audio and Video Appearances

The *Access to Justice Act, 2006* amended the POA to include provisions that, when in force, will allow *witnesses* in POA proceedings to give evidence by videoconference, audioconference or other electronic means.

- ❑ Should the POA allow remote appearances by all other participants in POA proceedings as well, including defendants and their representatives, subject to the discretion of the presiding judicial official?

¹⁸ Although defendants in designated areas must currently attend in person or through a representative to request a trial, most court offices accept requests for trial on behalf of other locations so that defendants can file their trial request closer to home. (Trials still proceed in the court service area where the offence occurred.) However, Municipal Partners have indicated that the practice of forwarding trial requests between court offices is administratively cumbersome and prone to error.

1.3. Improving the Delivery of Court Notices to Defendants

Over the course of a POA proceeding, the contact information for the defendant that is in the court record may become outdated. Many defendants mistakenly believe that notifying the Ministry of Transportation of a change of address for their driver's licence will ensure that the court also receives notice of the change.

The POA requires the clerk of the court to mail a number of important notices to defendants, including notices of trial dates, notices of impending convictions for parking offences and notices of fine and due date. Incorrect address information may lead to significant hardship for defendants, who may be convicted without a hearing if they fail to appear at trial or may be subject to fine enforcement measures such as licence suspension because they were unaware of a conviction. Such defendants may be unnecessarily forced to reopen¹⁹ or appeal a conviction. Inaccurate or out-of-date address information can also make it difficult for municipalities to locate those with unpaid fines. Defendants currently have an opportunity to update their address information on the form used to request a trial.

- How else might defendants be encouraged to provide updated address information to the court, including the name and address of their legal representative, if any? Should defendants be required by law to update their contact information with the court?

2. Enhancing the Enforcement of POA Fines

The Working Group recognizes that enhancing the enforcement of defaulted POA fines is an important opportunity to streamline and improve POA justice services. Fines are by far the most common sanction ordered by the court for provincial offences. A fine unpaid is justice not served, as the convicted offender has not paid his or her debt to society as ordered by the court. Significant resources are expended in pursuing offenders who defy court-ordered fines by delaying or evading payment. Improved fine enforcement would send a message that fine payment is taken seriously in Ontario and would reduce the incidence of unpaid fines.

Fine enforcement mechanisms currently available to Municipal Partners include: obtaining driver's licence suspensions or denials of vehicle permit registration for certain types of offences, using civil enforcement tools including writs of seizure and sale, referring unpaid fines to collection agencies, and reporting defaulted fines to consumer reporting agencies (credit bureaus).

In addition to the new fine enforcement tools discussed below, the Working Group is also reviewing ways to make existing fine enforcement tools more effective. For example, the Working Group is exploring:

- How to make it more convenient to pay outstanding POA fines and related fees; and
- How to provide Municipal Partners with better information to locate those with unpaid fines.

¹⁹ A defendant may apply for a reopening of a conviction entered without a hearing. The justice of the peace may quash the conviction and order a new trial.

The province could also streamline the approvals procedures for municipal fine enforcement processes (e.g., approval processes for the recovery of collection agency costs from defendants and for designating municipalities that wish to collect their own parking fines).

It is recognized that payment of POA fines may in some cases impose hardship on individuals and families. At the end of this section, options for providing greater relief against legitimate hardship are canvassed.

2.1. Adding Defaulted Fines to Municipal Tax Bills

Currently, the *Municipal Act, 2001*²⁰ allows a municipality to add charges and fees owing to it to the debtor's property tax bill. Although an outstanding fee or charge can only be added to the tax bill if owed by all of a property's owners, it is not always related in any way to the property in question. The *Municipal Act, 2001* also allows municipalities to add to the tax rolls any costs they incur carrying out work required under a by-law that a property owner has failed to do (one of many examples is cleaning up debris pursuant to a debris by-law). Further, municipalities are also authorized under various Acts to collect other specific costs, expenses and fees in the same manner as municipal taxes.

Some of the debts authorized to be added to tax bills are also deemed to have the same "priority lien status" as municipal property taxes. This means that the debt can be collected if a sale of the property were to occur through the municipal tax sale process. When a debt is given priority lien status, in addition to collecting it in the same manner as municipal taxes, it is given the same special lien status as property taxes (which means that it ranks ahead of those owed to other creditors) and the amount may form part of the cancellation price in the event there is a municipal tax sale of the property. Priority lien status has to date been reserved for debts that were incurred in relation to the property being taxed (e.g., expenses incurred by a municipality to conduct repairs to a property under the *Building Code Act, 1992*²¹). Allowing unpaid fines to be given priority lien status would create risks for mortgage lenders and, ultimately, could lead to the forced sale of someone's home or business.

- ❑ Should unpaid POA fines be collectible along with municipal property taxes?
- ❑ Many POA fines are imposed in cases that have nothing to do with a particular property or property ownership. Should this fine enforcement tool be limited to unpaid fines imposed for offences relating to the property being taxed and/or to property ownership? Please also comment on allowing unpaid fines to be given priority lien status.

²⁰ S.O. 2001, c. 25.

²¹ S.O. 1992, c. 23.

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

The *Municipal Act, 2001* allows municipalities to licence businesses and to impose conditions for obtaining or renewing a licence. Similarly, municipalities may establish mandatory requirements for businesses responding to procurement requests for suppliers of goods and services.

- ❑ Should payment of unpaid POA fines owed by a person applying for a municipal contract, permit or licence be a condition for obtaining or renewing a municipal contract, licence or permit?
- ❑ Should this fine enforcement tool be limited to circumstances where there is a relationship between the licence, permit or contract applied for and the offence for which the fine was imposed?

2.3. Expanding the Use of Licence Suspension and Licence Plate Denial

The *Highway Traffic Act* and the POA provide for the suspension of a person's driver's licence if he or she has not paid fines imposed for certain offences related to the use of a vehicle or road safety.

In addition, these Acts provide that an individual may be denied the ability to obtain or renew his or her vehicle permit (licence plate registration sticker) where he or she has unpaid fines for a limited number of offences, including parking infractions, red-light camera offences and offences related to school bus safety.²² This mechanism is known as "plate denial."

(1) Licence Suspension

While the Family Responsibility Office currently uses driver's licence suspension to encourage the payment of family support payment arrears, for outstanding fines, licence suspension as a POA fine enforcement tool is limited to motor vehicle violations (e.g., speeding) in Ontario. In Manitoba, Nova Scotia, Newfoundland and Labrador and England, licence suspension is also available for fines imposed in relation to offences unrelated to road safety.

The application of driver's licence suspension to offences unrelated to vehicle use raises significant policy concerns. Experience has shown, unfortunately, that some drivers continue to drive while under suspension. As a result, extending licence suspension to fine defaults for non-driving offences may result in an increased number of suspended, uninsured drivers on Ontario roads. Statistics show that suspended and uninsured drivers are much more likely to leave the scene of an accident, resulting in an increased risk of hit

²² Because they are enforced without identifying who was driving the vehicle at the time of the offence, vehicle owners are made liable for these offences. However, because the identity of the offending driver is unknown, failure to pay fines imposed for these offences does not trigger driver's licence suspension.

and run collisions and police chases. There may also be an increase in claims submitted to the Motor Vehicle Accident Claims Fund by road users involved in collisions with uninsured motorists.

Further, there are questions about the fairness and effectiveness of this measure. Greater use of licence suspension may create hardship for persons with unpaid POA fines and their families. For example, suspending drivers without access to public transit, drivers upon whom others rely for transportation, or drivers whose livelihood depends on their ability to drive might be viewed as unduly harsh. Licence suspension might also curtail the driver's ability to pay the fine.²³ In addition, all members of a household could be penalized due to the actions of a single person, if the family is dependent on the suspended person's ability to drive.

(2) Licence Plate Denial

Plate denial is administratively simple and highly successful in aiding the collection of defaulted parking fines. Plate stickers need to be renewed every year or two years, and those owing POA fines can conveniently pay them at the Ministry of Transportation (MTO) when seeking renewal of their licence plate.²⁴ Driving without a valid vehicle permit is relatively easy to detect because, where renewal is refused, the absence of a current sticker is clearly visible on a licence plate.

The limiting of plate denial to relatively few offences (*e.g.*, parking infractions) also stems from hardship concerns similar to those identified in relation to licence suspension and because plate denial may affect other regular users of vehicles. For example, although only one driver of the vehicle has committed the offence, his or her family members are equally prevented from driving the vehicle without a valid licence plate sticker. Persons who suffer the indirect consequences of plate denial are dependent on the person who owes the fine to pay it or seek the appropriate relief.

- ❑ Please comment on the use of plate denial for unpaid fines imposed for other offences *related* to the use of a vehicle (*e.g.*, speeding)?
- ❑ Please comment on the application of (i) licence suspension and/or (ii) plate denial to unpaid POA fines, in view of the issues set out above. Is it possible to address these concerns?

2.4. Improving Access to Civil Fine Enforcement Proceedings

The POA allows Municipal Partners to enforce defaulted POA fines by filing a certificate of default with the Small Claims Court or the Superior Court of Justice within two years of the fine being in default. Upon filing, the certificate becomes an order of that court, allowing the fine to be enforced in the same way as a civil court order.

²³ As discussed in section 2.5, additional hardship relief may be appropriate for those who cannot afford to pay POA fines in relation to all fine enforcement measures, including licence suspension.

²⁴ In contrast, fines resulting in driver's licence suspension must be paid to the court office before MTO can renew the licence.

The *Criminal Code*,²⁵ most POA equivalents in other provinces, the *Statutory Powers Procedure Act*²⁶ and the *Limitations Act, 2002*²⁷ do not limit the period for the civil enforcement of fines or court orders.

- Should the two-year limitation period for filing a certificate of default be eliminated?
- What would be the consequences of delay in enforcing fines through civil enforcement for persons who have unpaid POA fines?

2.5. Providing Relief from Financial and Other Hardship

The Working Group recognizes that fines or fine enforcement measures may cause financial or other hardship for those convicted of offences, which may be out of proportion to the underlying offence or the public interest.

The concept of “hardship” distinguishes those who can afford to pay POA fines from those who cannot afford to pay because of their economic circumstances. Efforts to collect fines from those who are unable to pay may cause stress to Ontario families and will be ineffective regardless of the fine enforcement tool used.

The POA currently provides some relief from financial hardship. Where a minimum fine is prescribed, the court has discretion to impose a fine that is less than the minimum fine or to suspend the sentence. Defendants may apply at any time to a justice of the peace for an extension of time to pay a fine. Unless the court finds that the request for the extension of time is not made in good faith or would be used to evade payment, the court must either extend the time for payment or order periodic payments. The only other remedy available to someone who owes a POA fine is to appeal the sentence that resulted upon conviction.

However, more effective relief from hardship may be appropriate in some circumstances, especially if enhanced fine enforcement tools are made available. Providing hardship relief would allow Municipal Partners to use fine enforcement resources more efficiently by focusing on persons who are able, but refuse, to pay POA fines.

Access to hardship relief may be triggered in a number of ways. For example, those who have unpaid fines might be permitted to apply to the court for relief, justices of the peace might be authorized to order those with unpaid fines to appear in court and to prove inability to pay, or the clerk of the court might be permitted to refer particular persons with unpaid fines to a justice of the peace for a review of their ability to pay. In considering

²⁵ R.S.C. 1985, c. C-46.

²⁶ R.S.O. 1990, c. S.22.

²⁷ S.O. 2002, c. 24, Sch. B.

hardship relief, the Working Group has noted the importance of guarding against frivolous applications by those who are in fact able to pay their fines and, where possible, preventing hardship from occurring in the first place.

- What options for hardship relief would be most appropriate for POA fines? For example, should the POA:
 - Provide for temporary court orders suspending all fine enforcement activities;
 - Should these orders be conditional on the defendant agreeing to a payment plan?
 - Give judicial officials discretion to discharge all or part of a fine or to order a payment schedule;
 - Provide a right to appeal the sentence that resulted upon conviction on specified “exceptional hardship” grounds and define criteria for assessing hardship, including material change in circumstances;
 - Require an inquiry into a defendant’s ability to pay before a fine is imposed in court;
 - Extend the statutory time to pay a fine to reduce both the number of requests for extensions of time to pay and the need for hardship relief; and/or
 - Encourage defendants to request hardship relief earlier in the process and before fine enforcement resources are expended by providing easier access to relief before a fine goes into default?
- Should the availability of hardship relief be restricted to accumulated fines above a certain monetary threshold?
- Should the use of particular fine enforcement tools be restricted to larger outstanding fines?
- What should the criteria and evidentiary requirements be to establish and prove inability to pay?
- What remedies might best address hardship concerns specifically related to (i) licence suspension and (ii) plate denial?

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

The volume of POA charges continues to grow each year in Ontario. One way to manage this increased workload is to make more efficient use of available court administration, court support, prosecutorial, enforcement and judicial resources.

3.1. Enhancing the Powers of the Clerk of the Court

Should the clerk of the court take on certain functions currently performed by justices of the peace in order to reduce demand for judicial resources?

(1) Permitting the Clerk of the Court to Adjourn Proceedings

The *Criminal Code*²⁸ permits a criminal court clerk, acting on the instructions of a judge, to adjourn the business of the court to a subsequent day.

The clerk of the court does not have the same authority to adjourn POA proceedings. Therefore, if no justice is available to adjourn scheduled matters, the defendant must be served with a new summons or notice of trial.

- ❑ Should the clerk of the court be authorized to adjourn matters in exceptional circumstances (such as a snowstorm or where the justice is ill) and acting on the instructions of a judicial official where one is unavailable to appear in person?
- ❑ Should the clerk of the court be authorized to adjourn proceedings where the parties have filed a mutual agreement to adjourn a first trial date?

(2) Permitting the Clerk of the Court to Reschedule Initial Hearing Dates

The clerk of the court currently sets the initial date and time for trials of ticketable offences under the POA by sending a notice of trial to the defendant. On occasion, the initial trial will inadvertently be set for a date upon which the POA court is not scheduled to sit or where no justice of the peace will be available to preside. Currently, such matters must be brought forward for an adjournment by a justice of the peace.

- ❑ Should the clerk of the court be authorized to reschedule the initial hearing date in such circumstances by delivering a clearly marked replacement Notice of Trial?
- ❑ Alternatively, should prosecutors be authorized to apply to a justice of the peace for an adjournment of all matters scheduled for a particular date on which the court will not sit without giving notice of the request to the defendants? The clerk would then deliver replacement notices of trial to all parties as ordered by the justice of the peace. Would either of these options result in an increase in the number of adjournments requested or the length of adjournments granted, creating delays in POA proceedings?

²⁸ See s. 474(2).

- ❑ If so, how might this be addressed (e.g., by restricting the number or length of adjournments that a clerk may grant)?

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

A fine becomes payable under the POA 15 days after it is imposed. However, defendants may at any time apply to a justice of the peace for an extension of time to pay. The court must extend the time to pay or order periodic payments unless it finds that the request has not been made in good faith or would be used to evade payment. The court may require the defendant to give evidence, on oath or otherwise, in support of the application.

- ❑ Should the clerk of the court be authorized to extend the time for payment of fines? (In this proposal, the clerk would only be permitted to grant applications for extensions, not to refuse them. If a clerk believed that the conditions for granting an extension were not met, the defendant would be required to make an application to a justice of the peace.)
- ❑ Should defendants be permitted to submit their extension requests to the clerk in writing rather than attending in person?

3.2. Streamlining Evidence in POA Trials

Many POA trials require that police and other enforcement officers attend in person to testify at trial. Because multiple POA trials are scheduled in blocks of time (*i.e.*, several to a list), much officer time is spent waiting for a particular matter to proceed. Officer availability also presents a trial scheduling challenge for court administrators.

One way to streamline this process might be the use of certified (written) evidence in lieu of an officer's oral testimony. Certified evidence could include a sworn statement by an officer of the facts that he or she would otherwise have testified about in person. This would preclude the cross-examination of the officer, but the presiding judicial official could have the discretion to order that the officer's oral testimony is necessary to ensure a fair trial. Certified evidence could also be restricted to categories of evidence or offences for which there is usually little basis to doubt the accuracy or reliability of an officer's certified evidence (e.g., speeding offences).

- ❑ Should the court be authorized to consider certified evidence instead of hearing an officer's oral testimony for offences where there is usually little basis to doubt the accuracy or reliability of the officer's evidence? For what categories of evidence? For what offences?
- ❑ If certified evidence were used in trials for speeding offences, in what circumstances should it be authorized (e.g., where the evidence is based on a prescribed presumption of accuracy for radar devices)?

3.3. Streamlining *Ex Parte* Trials

If a defendant fails to appear for a hearing for a more serious, non-ticketable offence under the POA, the court may conduct and decide the outcome of the trial *ex parte* (in the defendant's absence).²⁹ The prosecutor is required to lead evidence and witnesses are required to testify despite the absence of the defendant or a representative of the defendant.

Because *ex parte* trials are conducted in the absence of the defendant or his/her representative, no one is present to conduct a cross-examination challenging the officer's evidence.

- ❑ Should *ex parte* trials be streamlined in cases where imprisonment is not an available penalty by authorizing the use certified evidence?
- ❑ Alternatively, if the defendant fails to attend a scheduled trial for a non-ticketable offence, should the prosecutor be authorized to elect to proceed as if the alleged offence were an undefended ticketable offence (*i.e.*, to seek a conviction without a trial; penalties would then be limited to fines under \$500)?

Where a defendant fails to appear at a hearing for a more serious, non-ticketable offence, the court can either immediately proceed with an *ex parte* trial *or* it can adjourn the proceedings to another date and give the defendant a second chance to appear by issuing a new summons or a warrant for the new trial date.

- ❑ Should the POA clarify that, where a defendant does not appear in court as summonsed, a judge or justice of the peace may direct that the trial can proceed *ex parte* on another date without issuing a second summons or a warrant to the defendant?

3.4. Authorizing Judicial Pre-Trials

Pre-trials are sometimes held before a judge or justice of the peace in advance of more complex POA trials to narrow the issues for trial and to reach agreements about evidentiary or legal issues. This process helps to make more efficient use of court resources by reducing the length of complex trials and ensures that preliminary matters are dealt with more expeditiously.

The POA does not currently provide expressly for judicial pre-trials. As a result, parties may be uncertain about the scope or effect of a pre-trial, or the rules and procedures to be followed.

²⁹ The court must first be satisfied that the defendant was properly served with a summons to attend court.

The *Criminal Code* provides for pre-hearing conferences.

- Should the POA provide express authority for judicial pre-trials?
- If so, should the authority for and scope of pre-trials be similar to that found in the *Criminal Code*?³⁰

3.5. Limiting the Effect of Filing an Appeal

Under the *Highway Traffic Act*, demerit points are automatically applied to an individual's driving record upon conviction for certain offences (e.g., exceeding a speed limit by more than 15 km) as of the date of the offence. Various incremental consequences arise upon the accumulation of a particular number of points within a two-year period, including licence suspension.

When a POA defendant files an appeal, the conviction is not stayed unless the appellant successfully applies to the court for an order to stay the conviction pending appeal. Without such an order, the consequences of the conviction remain in place unless and until it is overturned on appeal.³¹ However, when a copy of the Notice of Appeal is filed with MTO's Registrar of Motor Vehicles, the conviction and related demerit points are required to be lifted from the defendant's driving record pending the appeal.³²

The Working Group has heard that many appeals are filed solely to delay the application of demerit points to the appellant's driving record. These appeals may be ultimately abandoned or unsuccessful, and the demerit points are reapplied as of the date of the offence. Nonetheless, the appellant may gain some advantage from having the points lifted temporarily (e.g., delaying licence suspension resulting from accumulated demerit points). This creates additional workload for the Registrar of Motor Vehicles and the courts.

- Should demerit points remain in place pending appeal unless the court orders that the conviction itself is stayed?
- Would this significantly reduce abandoned appeals?
- Would it significantly increase the volume of applications for stays of conviction pending appeal?

3.6. Increasing Maximum Fines To Reflect Inflation

Generally speaking, the maximum fine for less serious, ticketable offences (other than parking infractions) is \$500, despite any provision in the legislation that creates the offence.

³⁰ See s. 625.1.

³¹ One exception is licence suspension, which is stayed pursuant to the *Highway Traffic Act* from the time notice of the appeal is served on the Registrar of Motor Vehicles (unless the conviction is sustained on appeal).

³² Pursuant to O.Reg.339 made under the *Highway Traffic Act*.

The maximum fine for more serious offences is \$5,000, unless the law that creates the offence imposes a higher maximum fine. Many statutes do create higher minimum and maximum penalties. For example, the maximum penalty under the *Securities Act*³³ for the misrepresentation of securities information includes a fine up to \$5,000,000. Both maximum penalties in the POA were set in 1989.

- ❑ Should the maximum penalties under the POA now be increased to reflect inflation?³⁴ Adjusting for inflation since 1989, the maximum penalty for ticketable offences would be approximately \$750, and the maximum fine for more serious offences would be approximately \$7,500. The presiding judge or justice of the peace would remain responsible for determining the fine amount (up to the applicable maximum) to be imposed following convictions at trial.
- ❑ Would fines higher than \$500 for ticketable offences discourage early resolution and lead to more people requesting trials?

3.7. Reserving Summonses for Serious Offences

Before proceedings for a particular offence can be initiated using a ticket, the Chief Justice of the Ontario Court of Justice must have established a set fine for that offence. The set fine gives the defendant notice of what the consequences of conviction will be if he or she chooses to plead guilty to the offence by voluntary payment of the set fine (and related costs and surcharges) and cannot exceed the \$500 maximum discussed above. This option allows the defendant to resolve the charge without ever having to attend court.

If an offence does not have a set fine or if the officer believes that the set fine for a ticketable offence is inappropriate in a particular case, then the officer can initiate proceedings using a summons. Defendants who are summonsed do not have the option to resolve the charge out-of-court, and must appear before a justice or be tried in their absence. The requirement to attend court can be inconvenient, particularly for defendants who do not wish to dispute the charge or who are charged in an area other than their place of residence.

There are two types of summonses. A "Part I summons" commences a proceeding in which the fine cannot exceed \$500 and less complex procedures (generally reserved for more minor offences) apply. A "Part III summons" commences a proceeding in which higher fines and non-monetary penalties such as imprisonment or probation can apply. Enforcement officers have discretion to choose the summons that they think is most appropriate in the circumstances.

The Working Group has heard that Part I summonses are rarely used where a set fine is established for an offence.

- ❑ Should the Part I summons be eliminated?

³³ R.S.O. 1990, c. S.5, s. 122.

³⁴ Despite an increase in the maximum fine for ticketable offences, an offence would not become ticketable until a set fine were established for it. Provincial ministries must apply to the Chief Justice of the Ontario Court of Justice and municipalities must apply to the local Regional Senior Judge of the Ontario Court of Justice to establish set fines. Similarly, changing the maximum penalty for non-ticketable offences would only affect fines where the offence-creating legislation does not provide a different maximum fine.

3.8. Clarifying When a Ticket is “Complete and Regular”

A person who receives a POA ticket has three options: (i) plead guilty to the offence by paying the set fine and related costs and surcharges indicated on the ticket; (ii) plead guilty to the offence and request a reduction in the set fine before a justice of the peace; or (iii) dispute the charge by requesting a trial. If a defendant fails to exercise any of these options within 15 days of receiving the ticket or requests a trial and fails to attend at the appointed time and place, he or she may be deemed not to dispute the charge and convicted without a hearing. In these circumstances, the justice of the peace imposes the set fine for the offence charged.

However, a justice of the peace cannot enter a deemed conviction unless he or she finds that the certificate of offence is “complete and regular on its face.” If it is not, the justice must quash the proceedings against the defendant.³⁵ This review ensures that the ticket contains sufficient information for the defendant to know the case against him or her.

The POA does not establish criteria for determining when a certificate is “complete and regular.” Court decisions in POA cases have held that some or all of the following information must be complete and correct on a ticket:

- Name of the enforcement officer;
- Name of defendant;
- The statute and section creating the offence;
- Where/when the allegation arose;
- Date of service of the offence notice; and
- The consequences of conviction (fine amount).

Establishing these criteria in the POA would create more certainty for defendants about the validity of certificates of offence, would be more accessible for unrepresented defendants than case law, and would help them to make a more informed decision about how to respond to a POA ticket. It would also provide courts with guidance about when technical errors should make tickets invalid.

- Should the POA set out criteria for determining when a certificate of offence is “complete and regular”?
- What should the criteria be?

³⁵ The certificate of offence contains the same information as the offence notice (ticket) that is served on the defendant.

3.9. Clarifying Criteria for Assessing the Validity of a Guilty Plea

In criminal proceedings, a court may only accept a guilty plea from an accused if the conditions set out in the *Criminal Code*³⁶ are met. The court must be satisfied that the accused:

- is making the plea voluntarily;
- understands that it is an admission of the essential elements of the offence;
- understands the nature and consequences of the plea; and
- understands that the court is not bound by any agreement between the accused and the prosecutor.³⁷

This is known as a “plea comprehension inquiry,” designed to ensure that the defendant’s guilty plea is voluntary, unequivocal and informed.

Judges and justices of the peace must conduct a similar plea comprehension inquiry when a defendant pleads guilty in person before a Justice of the Peace in a POA proceeding.³⁸ Setting out the criteria for a valid guilty plea in the POA would clarify the rights of defendants and make them more accessible to those who are self-represented.

- Should the criteria for accepting a guilty plea be set out in the POA?³⁹
- What should the criteria be?

4. Other Options for POA Reform

The Working Group is also considering the following ideas for fine-tuning the POA.

4.1. Permit prosecutors to make submissions on fine waiver requests

In order to file an appeal of a conviction, defendants must first pay the fine imposed. This discourages appellants from filing appeals merely to delay fine payment. The appellant may alternatively apply to the court for a waiver of the requirement to pay the fine and instead enter into a recognizance to appear on appeal. In deciding whether to grant a waiver, the court must consider whether the appeal is frivolous, whether the continuation of the sentence is in the public interest, and whether granting a waiver would detrimentally affect public confidence in the administration of justice.⁴⁰ Currently, many prosecutors do

³⁶ See ss. 606(1.1) and (1.2).

³⁷ The court can reject the plea or impose any sentence it thinks appropriate.

³⁸ See *R. v. Shields*, [2002] O.J. No. 4876 (C.J.).

³⁹ If a new early resolution process for ticketable offences were implemented and allowed defendants who have reached a plea agreement with a prosecutor to submit guilty pleas to the justice of the peace in writing, the POA would need to provide for the plea comprehension inquiry to be in writing and/or give the justice of the peace the discretion to require a defendant’s attendance where necessary to conduct a plea comprehension inquiry in person. See section 1.1, above.

⁴⁰ *R. v. Harper*, [2001] O.J. No. 468 (S.C.J.).

not receive notice of these applications, and therefore are not able to make submissions that may be relevant to the court's consideration of whether granting the application would be in the public interest.

- ❑ Should prosecutors receive notice and be permitted to make submissions when a defendant applies to waive the payment of a fine pending an appeal of a conviction for a more serious, non-ticketable offence?

4.2. Mark municipal by-laws as exhibits

Copies of municipal by-laws, unlike provincial and federal statutes, must be proven as part of the process for proving that an offence occurred. The *Evidence Act*⁴¹ requires that the prosecutor produce a certified copy of the entire by-law or an extract of the relevant sections. However, there is currently inconsistent practice as to whether by-laws or extracts must be entered into evidence by prosecutors and marked as exhibits.

- ❑ Should the POA specify that copies of by-laws or extracts need not be marked as exhibits?
- ❑ If so, how could an appeal court confirm what by-law information was before the court that made the decision under appeal?

4.3. Return of seized items

During an investigation, enforcement officers may seize an item and seek an order for its detention for up to three months. A judge or justice of the peace may make an order to release a seized item to the person from whom it was seized where it appears that it is no longer necessary for the purpose of an investigation or proceeding.

- ❑ Should the POA set out criteria for release?
- ❑ Should an appeal be permitted when the order is made by a judge (currently appeals are only available from orders of a justice of the peace)?
- ❑ Should the POA, like the *Criminal Code*, provide that orders to release seized items do not take effect for 30 days or pending any appeal?

4.4. Permit officers to serve parking tickets by mail in limited circumstances

Sometimes defendants try to drive away before an officer can either affix a ticket to a vehicle or serve it personally. Attempting service in this circumstance can threaten the safety of the officer. Officers could be authorized to serve parking tickets by ordinary mail where other forms of service would be risky.

⁴¹ R.S.O. 1990, CHAPTER E.23, sections 29 and 32.

4.5. Clarify the definition of “provincial offences officer”

The definition of “provincial offences officers” under the POA could be clarified to specify that it includes municipal enforcement officers, by-law enforcement officers and special constables, in addition to police officers.

4.6. Authorize filing of informations by electronic means

In-custody defendants cannot schedule bail hearings until the officer attends, in person, before a justice to swear an information. This process would be expedited if, as is possible for some *Criminal Code* matters, officers could e-mail or fax informations to justices where attendance in person is not practical (e.g., from remote locations).

4.7. Strike out convictions for ticketable offences entered due to administrative error

Administrative errors sometimes occur when entering convictions. Currently, a municipality or “other body” can ask a justice to strike out a *parking* conviction entered due to an administrative error, without the defendant having to attend court. The same process could be made available where convictions for other types of ticketable offences are made due to administrative error.

4.8. Extend the time to appeal convictions for ticketable offences from 15 to 30 days

This would give defendants charged with ticketable offences, who are more likely to be self-represented, and who may therefore need time to ascertain their appeal rights, the same time to file an appeal as defendants charged with more serious offences.

4.9. Permit extensions of the limitation period for commencing a parking proceeding

Parking offences cannot be initiated until certain vehicle information is obtained. Regional Senior Justices could be authorized to extend the time for initiating proceedings where this requirement could not be met within the limitation period due to legitimate and extraordinary circumstances.

4.10. Repeal the requirement that defendants requesting a trial for a ticketable offence be asked to indicate in advance if they want to challenge the officer’s evidence

In practice, officers are often required to attend the trial to give evidence even where defendants do not indicate their intention to challenge the officer’s evidence on the trial request form.

4.11. Streamline the process for accepting guilty pleas to substituted charges

POA defendants may reach agreements with prosecutors to plead guilty to an offence other than the one with which they were originally charged. The POA could streamline the guilty-plea process by clarifying that the court can simply amend the charging document (ensuring that the court record of the original charge remains clear) and proceed with the new charge without requiring the defendant to plead not guilty to the original offence.

4.12. Clarify witness reimbursement processes

Currently, the calculation of the distance that a witness has travelled to testify varies between court service areas.

4.13. Provide that a count in an information is sufficient without indicating the precise time that the alleged offence occurred

Only the date of the offence is needed to establish that an information was laid within the prescribed limitation period.

4.14. Permit the clerk of the court to set trial dates after reopenings

This would clarify that the clerk of the court may give notice of trial dates after a justice of the peace grants a defendant's reopening application and orders a new trial.

4.15. Clarify that all defendants who fail to appear at trial for a ticketable offence will be deemed not to dispute the charge

The POA expressly deems that defendants who request a trial and then do not appear at their trial date are not disputing the charges against them. The POA could clarify that the same consequence applies to trials that resume after an adjournment and trials ordered following a reopening or an appeal.

4.16. Clarify that appeals must be filed in the court service area in which the conviction was entered

The POA provides that *trials* must be heard in the location that the offence occurred unless a change of venue is granted. The POA could clarify that *appeals* must also be filed in the court service area in which the conviction was entered, that is, the location where the relevant court file is held.

4.17. Encourage timely applications for extensions of time to pay fines

The POA could provide that defendants who fail to apply for an extension of time to pay a fine until after the initial period for paying the fine lapses would still be subject to the late payment fee of \$20.00.

4.18. Update POA warrant provisions

In addition to providing the procedure for the prosecution of provincial offences, the POA provides the statutory authority for enforcement officers to obtain warrants from justices of the peace for the investigation of offences. The current 25-year-old formulation does not permit judicial authorization of modern investigative techniques that are available under other provincial statutes and the *Criminal Code* and are routinely authorized by justices of the peace under other statutes (e.g., conducting forensic techniques at an offence location, gaining access to computer drives, engaging in surveillance). Possible amendments to the POA to update its warrant provisions to conform with those in other statutes would be in the interest of the consistent administration of justice. Any separate comments on this issue would also be welcome.

CONCLUSION

The Working Group invites your comments on any issues in this consultation paper, and any other suggestions to streamline POA procedures or fine enforcement. Again, the potential reforms set out above are intended to generate ideas and discussion, but are not intended to be exhaustive or final. They do not necessarily represent the views of the Attorney General.

Please send your comments or questions by mail or e-mail to:

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APPENDIX 'A'

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