



May 5, 2015

POA-AMP Consultation
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, Ontario
N M7A 2S9

Dear Sir/Madam:

The Ontario Bar Association (the “OBA”) appreciates the opportunity to comment on the Ministry of the Attorney General’s consultation paper “Exploring an online Administrative Monetary Penalty System for infractions of provincial statutes and municipal by-laws in Ontario” (“the Consultation Paper”).

The OBA

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 16,000 lawyers, judges, law professors and law students in Ontario. OBA members are on the frontlines of our justice system in every area of law and in every type of practice, and provide legal services to a broad range of clients in every region of the province.

In addition to providing legal education for its members, the OBA is pleased to assist government with dozens of policy initiatives each year – in the interests of the public, the profession, and the administration of justice. OBA members in our 39 sections would count amongst their clients municipalities, provincial prosecutors, and individual and corporate defendants related to every significant area of the *Provincial Offences Act*.

Comments

The Consultation Paper seeks public input on the merits and key features of an online Administrative Monetary Penalty (“AMP”) system for infractions of provincial statutes and municipal by-laws. The Consultation Paper notes that detail about how the system will operate is beyond the scope of the consultation, and that the ministry plans to work with subject-matter experts throughout the development process.

The OBA has long been a strong advocate for a fair and efficient justice system that seeks proportionality by ensuring that each and every case receives the resources it deserves, but not more. In 2011, the OBA convened a Justice Effectiveness Task Force with members from a broad cross-section of practice areas that provided recommendations to government on practical reforms in the justice sector. We continue to support reforms that would keep justice costs proportionate, avoid legal procedures that are unduly cumbersome or complex, uphold the principles of fairness and natural justice, and improve access to justice.

The OBA recognizes the possibility that an online AMP system might provide an appropriate and accessible way to deal with certain matters currently prosecuted under the *Provincial Offences Act* (“POA”). However, we also note that there is a very significant range of infractions that the ministry might interpret as falling within the Consultation Paper’s description of “less complex, straightforward”, “not criminal”, and “excluding very serious offences”.

In order to meaningfully assess the appropriateness of any online AMP scheme as an alternative to traditional court processes, the Ministry should not proceed without first engaging in focused consultations about (1) the nature of provincial offences and municipal by-law infractions that the ministry is considering, and (2) the scope of potential on-line and ancillary processes that the ministry could provide as part of a proposed new system.

Consultations about the nature of offences under consideration are essential to solicit critical advice about the key elements of the proposed offences and the associated processes that would need to be preserved under any system. The appropriateness of having specific infractions in an online AMP scheme should be assessed with respect such considerations as the seriousness of the offence, available defenses, secondary consequences and subsequent record, and the need for disclosure and witness evidence. The assessment should also consider how a proposed AMP might appropriately function as an enforcement tool within a system of escalating penalties, especially where there is an element of public safety.

Consultations about the scope of potential on-line and ancillary processes that the ministry could provide would allow meaningful comment on the ability meet the aforementioned requirements for the offences under consideration. For example, understanding whether there are streamlined opportunities for accused to present due diligence defences, have tickets cancelled if issued in error, have early resolution hearings, or easily access independent and impartial hearing officers will facilitate an assessment of whether the ministry is able to strike the appropriate balance that ensures cases get the resources they need.

Collectively, focused consultations on these two issues will allow a meaningful assessment of the suitability of a proposed online AMP approach as a fair and cost effective process that meets procedural fairness requirements in the absence of a traditional court process.

Conclusion

Once again, we appreciate the opportunity to provide input at this preliminary stage and look forward to the opportunity to comment further if the ministry wishes to proceed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E.G. Upenieks', is positioned below the closing text.

Edwin G. Upenieks
1st Vice-President, Ontario Bar Association