



Sent via email: attorneygeneral@ontario.ca

October 30, 2024

Honourable Doug Downey
Attorney General
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Honourable Mr. Downey,

You will recall the Town of Mono delegated to you at last year's AMO meeting in London (see attached). On October 19, 2023 I followed up with a letter and you responded on December 18 (both also attached). The key issues raised were as follows:

POA fines that have lost any real deterrent value due to not having been increased in 30 years or more. We estimate that 54% of all HTA fines fall into this category. Likewise, fines for infractions of municipal by-laws are woefully inadequate. In many instances these fines don't even cover the cost of prosecution.

Your December letter described the process of establishing set fines as follows:

"As set out in the Courts of Justice Act, the value of a set fine under the POA is established by order of the Chief Justice of the Ontario Court of Justice. The ministry responsible for the act or regulation that establishes the offence is also responsible for identifying an appropriate set fine for the offence. Once a set fine has been identified, based on specific and general deterrence principles, the applicable ministry would seek a set fine order from the Chief Justice. It is the Chief Justice that determines whether to issue the requested set fine order."

There are several problems with this. First, ministries are clearly not identifying appropriate set fines based on specific and general deterrence principles if, for example, over half the fines in the case of MTO have remained stagnant for 30 years or more, losing 50% of their original deterrence value. My efforts to get MTO to recognize this and commit to doing something have thus far fallen on deaf ears.

Second, municipalities are totally at the mercy of a broken process whereby they must apply to the OCJ's Regional Senior Judge to establish fines for by-law infractions. By-law fines in many instances are woefully inadequate from the standpoint of specific and general deterrence and often do not even cover the cost of prosecution. There is no methodical or consistent process for review and approval of these fines.

The situation is actually worse than just described when considering the amount of POA fines in default. In 2011, the total amount of POA fines in default was pegged at \$1 billion. A recent Ontario Court of Justice report indicated this amount now stood at just over \$4 billion but for reasons yet to be explained, this report was taken down from their website.

It brings the whole system of Provincial Offence justice into disrepute when fines are ignored, people continue to drive suspended for unpaid fines, and no serious efforts are made to correct this situation by the Province. Other Provinces recover unpaid fines through garnishment agreements with the Federal Government. Why don't we? These are monies owing to municipalities that are badly needed to offset policing and by-law enforcement costs. OPP costs for 329 municipalities have just increased by as much as 40%. In Mono, we are facing a 20.7% increase in OPP costs. It is outrageous that local taxpayers are expected to pick up these costs when so much uncollected fine revenue is simply left on the table.

Finally, the issue we discussed about the dire need to give POA courts the authority not only to fine upon conviction but to actually order remediation. This is particularly important in cases of Property Standards matters and other by-law infractions, especially ones involving the proliferation of illegal transport trailer yards.

You offered to refer this issue to the Ministry of Municipal Affairs and Housing. We've heard nothing from that Ministry. The better reference would be to the Chief of the Ontario Court of Justice who could potentially expand Justices of the Peace jurisdiction to order remediation with an appropriate avenue for appeal. The best we can now hope for is a POA conviction with an inadequate fine; potentially not even paid.

While there could also be a Probation Order, they are rare and a conviction for a breach only results in a \$1,000 fine and possibly custodial time. In 15 years on the Bench, I can't recall a single instance of these consequences occurring. To get remediation we are forced into Superior Court, something that is expensive and time consuming for all concerned.

Minister Downey, I hope you and your Government will attend to these issues. Municipalities are being hit with huge increases in policing costs along with the frustration of a broken POA court process that thwarts our efforts to get compliance with our by-laws. There are simple solutions that cost the Province absolutely nothing. Please take action.

Yours truly,



John E Creelman
Mayor, Town of Mono

Copy: Hon. Doug Ford, Premier
Hon. Sylvia Jones, Deputy Premier and MPP Dufferin-Caledon
Hon. Michael Kerzner, Solicitor General
All Dufferin Municipalities
Town of Caledon
Dufferin OPP Detachment Boards

**Delegation to the Honourable Doug Downey
Attorney General of Ontario**

By

John Creelman, Mayor of the Town of Mono

August 21, 2023

AMO Conference, London Ontario

Introduction:

This presentation is informed by my nearly 17 years on municipal councils and 15 years as a Justice of the Peace. I served 6 of those 15 years as Regional Senior Justice of the Peace for Central West judicial district.

Context of this presentation:

Provincial Offence issues have not received the attention they deserve since POA was transferred to municipalities from the Province around 23 years ago. This despite the fact that people will have greater interaction with the POA system than the Criminal system. According to 2020 statistics, the ratio of POA charges to Criminal charges is 8 to 1.

The efficiency, effectiveness and fairness of the POA system informs most peoples' impression of the justice system. If it's not efficient, effective or fair, a significant portion of system of justice in Ontario is potentially brought into disrepute.

What we know about POA?

First, it is starved of judicial resources due to the justifiable priority given to OCJ criminal assignments.

POA court closures however have become chronic, cases have been withdrawn in the thousands and time to trial pushes up to and often exceeds the *Jordan* requirement.

Finally, the pace of Justice of the Peace appointments and especially training also plays a huge role in the under-resourcing of POA courts.

While we are told the situation is improving, all of the problems described above have proven to be cyclical. Things must be done to break the cycle.

How Backlog can be addressed immediately:

A simple and elegant solution is to lift the pension cap for retired *per diem* Justices of the Peace to preside exclusively in POA courts to clear backlog. At last count there were over 60. This has been suggested before but stymied by senior levels of the Court. It was actually done however for *per diem* Judges but just not for Justices of the Peace.

Fines and process frozen in time:

Basic fines for speeding, representing over 54% of all HTA charges have not increased for decades, possibly 30 years or more. Over the same time, the value of a dollar in fines has decreased by almost 50% while the cost of operating POA has better than doubled. For municipalities dependant on POA revenue to fund the system let alone assist with local police costs, this situation is unsustainable.

The issue of fines and deterrence is further complicated by the antiquated notion fines are set by the OCJ Chief Justice or designate. There is no accountability here.

For example, municipalities looking for deterrence through fines for breach of their By laws are at the whim of Regional Senior Justices

(now designated by the OCJ Chief) who are almost totally focused on proportionality as opposed to deterrence. \$500 fines, not increased in years, are seen at best as a slap on the wrist or the price of doing business.

Lack of tools available to POA courts:

Worse than meaningless fines upon conviction is the inability of a POA court to impose meaningful Orders to rectify the issue that triggered the charges in the first place.

Probation Orders, for example, are rarely requested by the Crown upon conviction and in 15 years as a Justice of the Peace, I never heard of a situation where someone was charged or convicted of breaching a POA Probation Order, something that could result in custodial time - a significant penalty under the POA.

Unlike the Superior Court of Justice, a POA Court cannot order, for example, a cleanup of a property in the wake of a conviction under a Property or Community Standards By law. This is wrong and forces municipalities to make separate applications to the SCJ for such Orders. This is costly, time-consuming and wastes valuable court time *The trier of fact should have the power to order restitution subject to appeal.*

Unpaid POA Fines:

This is a huge problem and one that threatens the integrity of the POA system.

As far back as 2011 an excellent white paper produced by the Ontario Association of Police Services Boards estimated there were \$1 billion in unpaid fines - <http://oapsb.ca/wp-content/uploads/2021/05/OAPSB-POA-WHITE-PAPER-FINAL-1-Nov-2011.pdf>

This paper is as relevant today as it was 12 years ago. If anything, the situation described has gotten worse with few of the OAPSB's recommendations being acted upon.

In 2011 the OAPSB revealed that 91% of outstanding fines were owed by Ontario residents. One third of the amount is attributable to HTA charges while another third stems from convictions under the *Compulsory Auto Insurance Act*.

In Dufferin it has been estimated that outstanding fines amount to \$4.5 million. To make matters worse, the system is now being 'gamed' by people who pay only those outstanding fines necessary to reinstate their licence while ignoring others.

This is not just an issue for municipalities who lack effective tools to collect fines. It impacts the Province unable to realize potentially \$200 million or more in victim surcharge monies.

This situation is unsustainable and calls the administration of justice into disrepute. Current means of collecting unpaid fines are not working and all have deficiencies.

Ontario needs to join with provinces (e.g. Alberta, Nova Scotia) who have negotiated the power to garnish federal income tax returns and other federal payments for non-payment of fines.

Administrative Monetary Penalties:

AMPs are appropriate for such things as Part II offences, Red Light Camera charges, Automated Speed Enforcement and many municipal By laws. The more matters dealt with through AMPs, the greater the

relief to POA courts. There are however two big impediments to greater use of AMPs.

First is the complexity of Regulations governing AMPs. They need to be simplified and streamlined.

Second is the absence of infrastructures to administer AMPs. The City of Toronto has created one but it makes little sense to replicate administrative bureaucracy over and over again as municipalities adopt AMPs.

Along with addressing the 'red tape' associated with AMP Regulations, the Province may want to assist with the collection process.

Automated Speed Enforcement and why it should matter to MAG:
Another issue of concern is the inability to apply Automated Speed Enforcement technology on 80 kmh roads and without declaring Community Safety Zones were they are totally unwarranted.

While more appropriately addressed to MTO, I think this issue should be of interest and concern to MAG.

Greater use of ASE will be a deterrence to reckless speeding. That ASE is tie to Community Safety Zones is problematic for several reasons:

First, requiring CSZs simply to utilize ASE is totally arbitrary and makes a mockery of why CSZs were created in the first place.

Second, speeding charges in CSZs result in double fines, something municipalities are not seeking in order to implement ASE.

No 'red tape' or strings attached Automated Speed Enforcement will permit better utilization of police resources and create some revenue (not much as it's expensive to implement and operate) to offset increasing policing costs.

Finally if ASE is done in conjunction with AMPs, a great many matters can be diverted away from the POA stream.

Going forward:

Hopefully it is clear that POA needs a great deal of attention and creative problem solving.

There are many involved in this issue - the judiciary, MAG, municipalities and other stakeholders all having similar or sometimes different perspectives. Everyone needs to be engaged in a process to find better ways of doing things and finding solutions to real problems.

What is described in this document will not sort itself out on its own. Whether it is a Task Force or a POA Justice Summit or some other mechanism, something needs to be done...

Respectively submitted

John Creelman



October 19, 2023

Honourable Doug Downey
Attorney General of Ontario
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Attorney General,

I would again like to thank you for the opportunity of meeting at this year's AMO meeting in London. I am following up; specifically, on the issues of stagnant POA Set Fines including the way they are established and the lack of tools available to POA courts, both problems addressed among others in my presentation to you and your officials.

POA Set Fines

I pointed out in my presentation that basic HTA speeding fines, representing 54% of all HTA offences, have remained unchanged in 30 or more years. Over that time, inflation has eroded the dollar value of POA fines by nearly 50% while court and policing costs have increased exponentially. The situation is unsustainable. Of greater concern is these and other POA fines no longer have a deterrence value.

The process of setting all fines is not straightforward and needs to be reviewed. The principle of deterrence seems to be losing out to other factors. Fines are reviewed without reference to the last time they were increased, what they are in other municipalities within a given Region or beyond. This is a problem and needs immediate attention.

Lack of tools available to POA courts

Mono and other municipalities remain frustrated with the inability to get meaningful outcomes from POA courts. Court process takes time, by-law fines are ridiculously low and often seen simply as the price of doing business; if paid at all.

POA courts are powerless to order injunctions against an on-going offence or, upon conviction, make cleanup and restitution orders. Even the Niagara Escarpment Commission has greater powers of restitution.

Absent POA authority, we are forced to make separate applications to the SCJ with all the attendant delay and cost. This is unacceptable. The trier of fact in the first instance should have the authority to do more than impose meaningless fines.

Mr. Attorney General, I chose these issues from amongst others previous raise with you to emphasize that Mono takes the enforcement of by-laws and the HTA seriously. Municipal by-laws and the HTA are openly flouted due to the perception we lack appropriate enforcement tools and fines. We are not in a position to fix these problems; but, I am prepared to work with your ministry to address them.

Yours truly,



John E. Creelman
Mayor

Copy: Hon. Sylvia Jones, Deputy Premier and MPP Dufferin-Caledon
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Our Reference #: M-2023-9043

December 18, 2023

His Worship John Creelman
Mayor
Town of Mono

Email: info@townofmono.com

Dear Mayor Creelman:

It was a pleasure meeting with you at this year's Association of Municipalities of Ontario (AMO) annual general meeting and conference. Thank you for your letter sharing your thoughts and suggestions on set fines under the *Provincial Offences Act* (POA) and meaningful outcomes in POA courts.

As set out in the *Courts of Justice Act*, the value of a set fine under the POA is established by order of the Chief Justice of the Ontario Court of Justice. The ministry responsible for the act or regulation that establishes the offence is also responsible for identifying an appropriate set fine for the offence. Once a set fine has been identified, based on specific and general deterrence principles, the applicable ministry would seek a set fine order from the Chief Justice. It is the Chief Justice that determines whether to issue the requested set fine order. Set fine orders can be accessed [here](#).

The Ministry of Transportation (MTO) is responsible for the *Highway Traffic Act* (HTA) and would be better suited to address your concerns regarding set fines for HTA offences. For your convenience, I have forwarded your inquiry to MTO for review.

Based on previous discussions, I understand that your letter may be referring to orders related to property standards. For your convenience, I have taken the liberty of forwarding your concerns to the Ministry of Municipal Affairs and Housing which is responsible for the changes to establish by-laws and enforcement related to property standards.

My ministry continues to work with municipalities to modernize the provincial offences court system as a key component of my ministry's strategy to improve access to justice, increase efficiencies and enhance POA court services. The perspectives and expertise of municipalities will be essential in ensuring that any changes made to introduce new processes are fair, effective, and meet the needs of Ontarians.

Once again, I thank you for your letter and your commitment to the administration of justice. We value and appreciate your feedback and will take it into consideration in the future.

Sincerely,

A handwritten signature in black ink that reads "Doug Downey". The signature is written in a cursive, flowing style with a long horizontal stroke extending from the end of the name.

Doug Downey
Attorney General

c: Ministry of Transportation
Ministry of Municipal Affairs and Housing