

# Time to move parking tickets out of court?

BY GLENN KAUTH  
Law Times

Justices of the peace spend almost 60 per cent of their time on the most minor charges under the Provincial Offences Act, so is it time to streamline the process to remove things like parking infractions from the courts?

That was a key question considered in an interim report on the act by the Law Commission of Ontario. As the report notes, almost 11 per cent of the 2.8 million parking tickets issued in Toronto in 2009 resulted in a request for a trial. The numbers were lower in other cities. In Ottawa, for example, there were trial requests in just two per cent of the cases, while in Brampton, Ont., the number was four per cent.

Certainly, moving to an administrative monetary penalty model instead of a fine system would save time and money.



**'The real dilemma is that most people who go to provincial offences court are unrepresented,' says Carole McAfee Wallace.**

An administrative model using non-judicial adjudicators imposes a penalty once an enforcement officer detects an infraction, whereas a fine takes effect only after defendants have pleaded guilty or the court has convicted them.

Ontario has allowed municipalities to establish administrative penalties for parking infractions since 2001, but so far only Vaughan, Ont., and Oshawa have moved forward.

But Mohan Sharma, the head of the law commission project, says saving time and money wasn't the key concern. "I think the paramount consideration is the message it sends to the public about our system of justice," he tells *Law Times*. "In our view, the justice system and the Ontario Court of Justice should be used to hear more serious cases."

The report recommended a two-year delay before implementing provincial legislation mandating administrative monetary penalty regimes for parking offences. It also suggested that the government review a number of minor offences under the Highway Traffic Act to see whether they should also be subject to an administrative system.

"There are a variety of factors that might come into play," says Sharma, who notes that switching to a swifter penalty regime for offences like failing to wear a seatbelt could raise constitutional issues. "Some academics said that might not be as routine [as parking] if police are racial profiling," he notes.

According to Sharma, constitutional and administrative concerns have so far been key reasons why most municipalities have yet to move away from a court-based system. For example, if an offender doesn't pay the penalty, there needs to be some way for towns and cities to report that to the Ministry of Transportation. As a result, they'd need some sort of technological infrastructure to do so, Sharma notes.

He's not, however, overly concerned about constitutional issues stemming from an administrative monetary penalty regime for parking tickets.

What matters, he says, is "the nature of the offence. If the penalty is one that approaches being high, some might question going to an [administrative] model."

For Carole McAfee Wallace, the idea of extending an administrative regime beyond parking offences to other Highway Traffic Act matters raises concerns. Her transportation law practice at Weir Foulds LLP focuses in part on representing trucking companies facing Highway Traffic Act charges, and she notes that while some offences may seem minor, they can have significant implications for those convicted. "The consequences of a conviction are very significant for a trucking company's safety record," she says.

With minor speeding offences, for example, a conviction may not mean a penalty in terms of points but it could affect insurance rates. At the same time, the offence could end up on the trucking company's commercial vehicle operator's registration. The result would be a diminished safety record with the Ministry of Transportation.

"Because the administrative monetary regime has limited scope for defences, they wouldn't have the full range of defences," says McAfee Wallace.

She gives the example of a trucker who pulls into an inspection station only to find something wrong with the brakes. The fine would be \$300, but if the company can show due diligence by proving there had been maintenance and inspections on the truck according to its policies, it could have a viable argument against the charge in court. But an administrative monetary penalty model offers less scope to make a full answer and defence, says McAfee Wallace.

Nevertheless, she welcomes the idea of taking parking tickets out of the courts, where she says she faces long delays in getting matters to trial. In Toronto, she notes, it can take up to a year to get a trial. "The real dilemma is that most people who go to provincial offences court are unrepresented," she says, adding it's difficult to get the hour or two required to defend a case. "If you want to run full-blown trials, it's hard."

At the same time, McAfee Wallace believes that if the province is going to move towards an administrative monetary regime, it needs to provide some scope for accused to defend themselves and some leeway on the penalty. "A lot of thought needs to go into moving something other than parking tickets into an [administrative] regime," she says.

Sharma, meanwhile, says the law commission has received lots of support in the feedback on the interim report so far. A final report should be ready by the fall, he notes. **LI**

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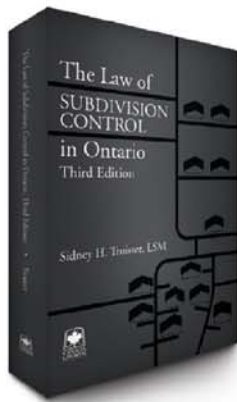
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