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The Advocates' Society

PROMOTING EXCELLENCE IN ADVOCACY

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VIA EMAIL

The Honourable Madeleine Meilleur
Attorney General of Ontario
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Madam Attorney:

Re: Consultation regarding an Online Administrative Monetary Penalty System

As President of The Advocates' Society (the "Society"), I write to offer the Society's comments on your Government's request for input on the merits and key features of an online Administrative Monetary Penalty (AMP) system. As you know, the Society speaks on behalf of litigation lawyers from across the province. With more than 5,000 members, the Society reflects diverse and considered views of the litigation bar.

The Society has reviewed the consultation paper entitled "Exploring an online Administrative Monetary Penalty System for infractions of provincial statutes and municipal by-laws in Ontario" (the "Consultation Paper"). From conversations with your staff, we understand that this project is in its early stages and that decisions have yet to be made about the scope of and process for any new online AMP system. Recognizing that this project is in its early stages, the Society is grateful for the opportunity to raise the following concerns and considerations with regard to any proposed online AMP system.

Preservation of Procedural Rights

While, as the Consultation Paper correctly notes, the current system is complex, this complexity results in part from the procedural protections inherent within the system. The procedural rights of those facing the adjudication of an AMP must be preserved in any online system. These procedural rights include:

- the right to receive a notice of intention to impose an AMP
- the right to reasons for the intended imposition of an AMP
- the opportunity to be heard in response to the intended AMP
- the right to an appeal of a decision relating to an AMP, to the extent these appeal rights already exist, or the right to review a decision rendered through an online dispute resolution process with regard to an AMP
- the identity of the decision-maker needs to be known

To the extent that certain provincial offences are afforded fewer procedural protections under an

online AMP system, it is important that this change is reflected in a change in the severity of the offence, including any stigma attached to the offence. If, for example, the resulting system results in a change in the burden of proof from proof beyond a reasonable doubt to proof on a balance of probabilities for certain offences, thus increasing the likelihood of a conviction, this poses a concern if the stigma of the offence remains the same.

Equity and discretion play a significant role in the administration of Part I offences under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, both at the time the ticket is issued and at the time of adjudication (e.g. pleading down an offence). The Society believes that any online adjudication system should maintain these features as the exercise of equity and discretion are to the benefit of all interested parties.

Fairness and Access to Justice Considerations

An online adjudication system for AMPs could, if the considerations above are not taken into account, result in an increased conviction rate for those charged with AMPs. This poses a concern not only from the perspective of increased conviction rates, but also in relation to the impact of a previous offence as a potential aggravating factor in considering a penalty for a subsequent offence (see the *Regulatory Modernization Act, 2007*, S.O. 2007, c. 4).

An online system also raises concerns related to access to online resources and disparities in literacy. As a significant portion of the population does not have robust access to digital media, provision would need to be made to ensure there are resources (e.g. public computer kiosks) that make the online adjudication system accessible to this portion of the population. As a related point, the online adjudication system must be user-friendly and intuitive, as many parties who are contesting AMPs are self-represented and may find it difficult to navigate through an online system.

Additionally, The Society urges a consideration of how AMPs, in particular Part I traffic offences under the *Provincial Offences Act*, will impact auto insurance rates. The use and reporting of driving-related AMPs should be closely examined in this process as these AMPs may have a significant impact on automobile insurance rates for Ontarians.

Cap on Penalty Amount

The Society believes that ticketable offences with a maximum fine of \$1,000 may be appropriate for an online AMP system, but this should be the cap on the amount of an individual penalty.

The Society believes that there should also be a cap in the aggregate beyond which the matter is diverted into the court system, and this must be strictly observed. An online AMP system risks the automatic imposition of several AMPs at once for the same offence, which may have been systemically committed through inadvertence without the chance of receiving notification to first correct the issue, resulting in a disproportionate penalty.

A Possible Alternative Role for an Online AMP System

Recognizing that many cases can be resolved without a formal adjudicative process, the Society suggests that an online system may be beneficial for informal attempts at resolution (e.g. online negotiations, plea-bargaining). Such systems are already in place in certain American jurisdictions.

If a matter cannot be resolved through informal online attempts, it may be beneficial to retain the option of an in-person hearing for adjudication of the matter. The adjudication of these disputes in

court leads to a positive perception of the judicial system as, for many, the adjudication of these disputes is the only interaction they will have with the justice system.

We trust there will be an opportunity for further consultation on this matter and we look forward to continuing to engage with you on this issue.

Yours very truly,

A handwritten signature in black ink, appearing to read "Peter Lukasiewicz". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter J. Lukasiewicz
President