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REPORT INTO ADMINISTRATIVE MONETARY PENALTIES (AMPS) FOR PARKING INFRACTIONS

The Modernization of the Provincial Offences Act

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I. INTRODUCTION

This paper addresses the question of whether municipalities should be required to establish AMPS (administrative monetary penalties system) for parking offences, presently prosecuted under Part II of the *Provincial Offences Act*[1]. The analysis which follows examines the constitutionality of the 2007 amendment.[2] to Ontario's *Municipal Act, 2001* which introduced AMPS for parking infractions under the new section 102.1 of the *Municipal Act*.[3] and the accompanying Ontario Regulation 333/07 which gave municipalities the option of adopting AMPS. An identical enabling amendment to the *City of Toronto Act*[4] introducing AMPS and the accompanying Regulation 611/06, providing the City of Toronto with the same option of adopting AMPS, will be addressed throughout the paper as well. The Paper will further identify what, if any, key changes could be made to the AMPS system and whether the option to prosecute a violation under Part II of the POA should be retained.

A. The Problem

As the population grows, residential and industrial building expands and demand for public funds grow, new ways must be found to ensure that our cities can accommodate increasing vehicular traffic. Parking infractions, enforced through a system of monetary penalties and ultimately, the withholding of driving privileges for delinquent penalty recipients, remains

a deterrent to this looming chaos, providing that the consequences of non-compliance are sufficient to motivate drivers to obey the law.

The traditional approach has been to issue parking tickets and provide court dates to those who wish to contest their tickets. This has proven expensive and inefficient. In its submission to the Standing Committee on Justice Policy respecting Bill 14, *Access to Justice Act 2006*, the Association of Municipal Managers, Clerks and Treasurers of Ontario noted that violators were taking advantage of the lack of court resources by demanding trials and having their matters dismissed not on the merits, but because they could not be heard within an acceptable amount of time. In the view of the Association of Managers, this circumstance in turn, undermined respect for the administration of justice as those who obeyed the law perceived that the system favoured those who sought to avoid it.[5] Aside from law abiding motor vehicle owners losing confidence in the law in these circumstances, the cost of having parking enforcement officers attend court is punishing, because they must be paid time and a half in order to attend court while off-duty. The Director of Finance and Administration for Toronto Police Services was recently quoted as saying : "We don't want them to attend court while they're on duty because then they wouldn't be issuing tickets."[6] The costs are further inflated by the annual salaries and benefits of justices of the peace who typically hear trials for parking infractions.[7] These annual salaries and benefits range

from slightly over $100,000 to $178,000.[8] Judicial officers do not even need to be lawyers[9], though some are. Since justices of the peace are needed for criminal bail hearings and proceedings with more significant public safety implications such as building and fire code proceedings and prosecutions of environmental and health and safety matters, relieving them of their responsibility for trying parking infractions could significantly reduce costs and backlogs in overcrowded courts, and improve the deterrent impact gained from adjudicating matters closer to the time of their occurrence.

At the same time as the threats to the integrity of the justice system and the increasing financial burdens on government are sought to be avoided, the public's continuing expectation of fair and just treatment, requires that any legislative reform which would expedite proceedings be carefully crafted to preserve rights of review and appeal. Recently, in the United Kingdom, a majority of those surveyed on a system of administrative penalties, expressed a preference for retaining the right to review any issued AMP and a further right to appeal that review should it be unfavourable.[10]

B. The Solution

The Province of Ontario has, as indicated above, paved the way for AMPS by enacting s.102.1 of the *Municipal Act* along with *Regulation*

333/07[11].Ontario Regulation 611/06 was also enacted to implement AMPS under the City of Toronto's own enabling legislation.[12] So far, only the City of Vaughan has implemented AMPS for parking infractions with By-Law 156-2009, which took effect in August 2009.[13] The City of Brampton is exploring implementation opportunities and evaluating the costs and benefits of AMPS for minor parking infractions.[14] The Committee of Council Report from Brampton noted that:

> Most of the more than 100,000 parking tickets issued annually would be eligible for the administrative penalty system (ineligible tickets include accessible parking infractions and other parking infractions with fines greater than $100.00).
>
> The establishment of a system of municipal parking administrative penalties could result in a more stream-lined, citizen-friendly process for disputing minor parking infractions and eliminate the requirement for persons to appear in court. This would in turn free up judicial resources to preside over courts hearing trials of Part I Provincial Offences Act matters to more serious Part III trials.[15]

In terms of costs, the City of Vaughan pays their Screening and Hearings Officers a maximum of $500 to $600 a day, which, in the course of a year, works out to some $40,000 – substantially less than the $100,000 plus salaries of justices of the peace. Moreover, since AMPS was implemented in Vaughan, the percentile of contested parking by-law infractions has dropped from 3.5% to 1.5%. Officials with the City of Vaughan, interviewed for this Paper, attribute the drop in contested parking infractions to the ready availability of meetings and hearings with reviewing officers. Meetings can be arranged within a week of receiving the AMP. When recipients of notices of infractions could delay payment for

six months or more by contesting the notice, the inconvenience involved in doing so paled in comparison to the reality of having to part quickly with the monetary amount affixed to the notice[16] Reduction in the number of contested notices and any resulting increase in the time enforcement officers have on the street to enforce parking by-laws has the added benefit of controlling what is referred to as the "compliance deficit" –the failure to undertake enforcement action for known non-compliances because of a lack of resources to respond proportionately to infractions.[17]

There is nothing revolutionary in the legislative recognition of AMPS for parking infractions. Thirty- nine years ago, New York State legislators moved parking violations in New York City out of the Criminal Court and placed them with an administrative tribunal, the Parking Violations Bureau, a unit of the New York City Transportation Administration[18] Twenty years ago, the City of Chicago adopted an administrative system in which private lawyers hired by the City as part-time hearings officers adjudicate tickets challenged by recipients.[19] The U.S. Court of Appeals for the Seventh Circuit, in *Ada Van Harken et al v. City of Chicago,* held that the City's procedures, including treating the parking ticket as the equivalent of an affidavit and not requiring the officer who wrote the ticket to attend before the hearing officer, satisfied the due process requirements of the U.S. Constitution. In the Court's reasons for decision, Judge Richard Posner commented that:

> The traditional system, mindlessly assimilating a parking ticket to an indictment for murder, was archaic and ineffective[20]

What follows is an analysis of how the streamlined system adopted by the Province of Ontario measures up to Canadian constitutional and administrative law standards To relieve the suspense, the conclusion reached is that the AMP legislation does meet minimum legal standards, but some amendments might provide greater clarity and efficiencies province-wide, while continuing to recognize local variations in enforcement and parking patterns.

II. APPLICATION OF THE CHARTER OF RIGHTS AND FREEDOMS [21] (Charter of Rights)

A. General Principles*:*

The application of the Charter of Rights, a constitutional instrument which takes precedence over legislation passed by governments, to parking laws, begins with a consideration of the distinction in law between criminal or penal law and regulatory law. One author has written that

> While the distinction is not definitive, it is an important element in the contextual approach to determination of fundamental rights. The Supreme Court has repeatedly stated that rights that are fundamental in the criminal context may not be in the regulatory context or may have a more restricted ambit[22].

The Charter of Rights is, in short, applied rigorously to the criminal law and less so, to regulatory law. The distinguishing features of the two

categories of law, criminal and regulatory are succinctly articulated in the reasons for judgment of Mr. Justice Cory in the Supreme Court of Canada's 1991 decision in *R.v Wholesale Travel Group.*[23]

> While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

The kinds of conduct which the criminal law deals with are acts of moral turpitude such as rape, robbery and murder. Regulatory law on the other hand, does not focus on the morality of the acts themselves, but their consequences.[24] Parking infractions fall into this latter category.

Since the *Wholesale Travel* case, appeal courts have fleshed out the extent to which various rights protected by the Charter apply to regulatory laws.

B. Security of the Person

Section 7 of the Charter of Rights provides:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

It is now clear from the case of *Rv. Transport Robert (1973) Ltée (2004)*[25] (t*he flying tire case*) that so long as there is no risk of imprisonment, the stigma associated with a contravention and even the severity of the penalty may not invoke the protection of the security of the person

extended under section 7 of the Charter. The Court of Appeal in the flying tire case upheld as constitutional the *Ontario Highway Traffic Act*[26] prohibition against the owner or operator of a commercial vehicle whose wheel became detached while on the roadway, even though the maximum penalty was a fine of $50,000, and the owner or operator was denied any defence of due diligence in avoiding or preventing the detaching of the wheel.

Both sections 6 of the *Regulation 333/07* under the *Municipal Act*, and the specific and virtually identical Regulation 611/06 under the *City of Toronto Act*, state that the amount of the AMP established by the municipality/ City shall not be punitive in nature, shall not exceed the amount reasonably required to promote compliance with a designated by-law and must not exceed $100. Subsection 11(2) of both these Regulations further clarify that enforcement measures taken in addition to filing a certificate of default in a competent court when an AMP is not paid on time, "shall not be punitive in nature". As Ontario AMPS Regulations provide that certificates of default may be enforced in the same manner as an order of the court ,[27] the Superior Court of Justice could conceivably order imprisonment if there is a finding of contempt of court based on the person in default having willfully failed to attend as required in the notice of examination, or refusing to answer questions or produce records or documents.[28] The basis for the imprisonment would however, result from

a judicial finding of fault in relation to the default proceedings. As with imprisonment for default under the *Provincial Offences Act*, enforcement for default of payment in the civil courts would require an intervening hearing in front of a judicial officer before a period of incarceration could be imposed accompanied by the safeguards attached to such a hearing. Courts in Ontario, dealing with parking and speeding infractions under the *Provincial Offences Act* have concluded that because of the intervention of a judicial hearing, and a necessary finding of willfulness, the risk of imprisonment for default is not "a real possibility."[29] This conclusion is reinforced by language in both *Regulation 333/07* under the *Municipal Act*, and Regulation 611/06 under the *City of Toronto Act* which, as indicated above, explicitly prohibit punitive penalties and punitive supplementary enforcement measures for default , evidencing a clear legislative direction to the courts to avoid ordering imprisonment.

Based on the authority of *Robert Transport*, and the parking and speeding cases dismissing the risk of imprisonment for default of payment as a very remote possibility, the AMPS established by *Regulation 333/07* under the *Municipal Act*, and Regulation 611/06 under the *City of Toronto Act,* could expressly deny vehicle owners any defence of due diligence even if the penalty was much higher than $100. The City of Vaughan By-Law has by implication [30] removed the defence of due diligence since the only grounds for cancellation or reduction of the AMP are establishing that the motor

vehicle was not parked, standing or stopped as described in the penalty notice, or undue hardship.[31] The Vaughan By-Law only authorizes the Screening or Hearings Officer to cancel or reduce the AMP when the allegation in the AMP notice that the parking, standing or stopping was not in conformity with the By-Law is fully negated by the recipient of the penalty. A due diligence defence would give the recipient of the AMP the right to cancellation or reduction of the AMP even if it could not be proven that the parking, standing or stopping was not fully compliant with the By-Law, provided that the AMP recipient could demonstrate that he/she had taken reasonable steps to avoid non-compliance with the By-Law. Since the only grounds permitted in the Vaughan By-Law for cancellation or reduction are much narrower than that, due diligence is thereby eliminated by implication.

Since Chicago has had some 20 years of experience with an administrative penalty system for parking infractions, it is useful as guidance, rather than as binding authority, to examine how their courts have applied their constitutional protections to AMPS, specifically in the area of streamlining the procedure for conducting hearings. The streamlined procedure in Chicago is part of an overall regulatory objective to create greater efficiencies in the enforcement of minor infractions and that appears to be a key objective in the introduction of AMPS for parking infractions in Ontario. In *R.v Fitzpatrick*.[32] the Supreme Court of Canada

outlined how both the Canadian and U.S. Supreme Courts had similarly found their procedural fairness protections under their respective constitutions to be subject to valid regulatory schemes. More particularly, the protection against self-incrimination embedded in the U.S. Fifth Amendment and section 7 of the Canadian Charter could not be applied in either country to frustrate regulatory schemes of self-reporting. It is therefore useful to look at how American case law has applied the Fifth Amendment “due process protection” to the summary procedures adopted in Chicago for administrative penalties for parking infractions.

In the *Van Harken case*, the U.S. Court of Appeals for the Seventh Circuit found that the administrative penalty system for parking offences in Chicago did not violate the due process protection even though the system permitted the ticket to speak for the enforcement officer and only required the attendance of the officer if the hearing officer subpoenaed the officer as a witness. The Court reasoned that a cost-benefit analysis justified making the enforcement officers’ attendance exceptional, because if the ticketing officer were required to attend, the number of hearings requested would undoubtedly be higher because recipients of penalties would think it likely the officer wouldn’t show up – a frequent occurrence at hearings on moving violations. Officers would be required to take time away from issuing violation notices. More hearings officers would be required at additional cost to the City because each hearing

would be longer as a result of a another live witness. Acquittals as result of the officer's failure to appear, would undermine the deterrent efficacy of parking laws and deprive the City of revenues to which it was entitled as a matter of substantive justice.[33]

The Ontario AMPS Regulations do not require the attendance of the AMPS enforcement officer although the City of Vaughan By-Law does require that the motor vehicle owner, AMPS enforcement officer, referred to in the Vaughan By-Law as a Municipal Law Enforcement Officer and Director of Enforcement Services be given an opportunity to be heard before a Hearings Officer makes a decision to affirm, cancel, reduce or extend the time of payment of the AMP.[34] The recipient of the penalty is at somewhat of a disadvantage at the initial review stage with the Screening Officer, since the Screening Officer has no power to summons the AMPS enforcement officer to appear before the Officer and under the Vaughan By-Law in particular, the recipient bears the onus of proving on a balance of probabilities the grounds for cancellation or reduction of the penalty. It would be frustrating for the recipient of the penalty to meet this burden of proof before the Screening Officer without the attendance of the AMPS enforcement officer. Hearings Officers on the other hand, are already empowered under the *Statutory Powers Procedure Act* to summon any persons to appear before them if it would help resolve the matter before them[35], since the AMPS Regulations under both the

Municipal Act and the City of Toronto Act require the Hearings Officers to apply the *Statutory Powers Procedure Act*.[36] Other AMP schemes have recognized the efficacy in conferring a summons power on the reviewing officer. The power to summons any relevant witnesses has for example, been conferred on the Chief Review Officer under the *Canadian Environmental Protection Act*[37] (C.E.P.A.) who will, if the *Environmental Violations Administrative Monetary Penalties Act*[38] comes into effect, be empowered by that Act, to review AMPS under federal environmental laws.

C. Presumption of Innocence /Double Jeopardy

A Charter of Rights protection of particular interest in the context of AMPs is section 11. The relevant parts provide as follows:

> Any person charged with an offence has the right….
>
> *(d)* to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;….
>
> *(h)* if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again;

Both the right to be presumed innocent and the right not to be in jeopardy a second time, only apply to persons who are charged with an "offence". The evolution of Canadian constitutional law now strongly suggests that AMPS for parking infractions do not qualify as offences, meaning that neither of these constitutional rights would apply to such infractions, even

if the Regulations permitted concurrent prosecution under the *Provincial Offences Act.*

Provincial Regulation 333/07 under the *Municipal Act* and Regulation 611/06 under *The City of Toronto Act* each provide a right of review of the AMP by a Screening Officer appointed by the municipality/City.[39]The Screening Officer is given the power to cancel, affirm or vary the penalty," upon such grounds as are set out in the administrative penalty by-law."[40] The recipient of the AMP has a right to have the Screening Officer's decision reviewed by the Hearings Officer also appointed by the municipality/City , who must provide the person requesting the review with an opportunity to be heard.[41] Since no similar opportunity is expressly conferred during the initial review before the Screening Officer, it may be inferred that the right to be heard at the original review has not been recognized. The Hearing Officer may also cancel, affirm or vary the penalty ,"upon such grounds as are set out in the administrative penalty by-law."[42] The Hearing Officer's decision is final.[43]

The City of Vaughan By-Law, elaborates on the procedures applicable to AMPS. It requires that the Screening Officer hold a 'meeting' with the vehicle owner before deciding on a request to review the AMP.[44] As yet, there are no rules for how the meeting is to be conducted. The By-Law, however, does require the Hearings Officer to conduct a hearing where

the vehicle owner, the Municipal Law Enforcement Officer and the Director of Enforcement Services are given an opportunity to be heard. Both the Regulations implementing the *Municipal Act* and *City of Toronto Act* relating to AMPS for parking and the Vaughan By-Law require that the hearing before the Hearings Officer be conducted in accordance with the *Statutory Powers Procedure Act.*[45]

The Vaughan By-Law goes further than Provincial Regulation 333/07 under the *Municipal Act* and Regulation 611/06 under *The City of Toronto Act* by reversing the burden of proof on vehicle owners. Screening or Hearings Officers may cancel, reduce or extend the time for payment of the AMP where the vehicle owner establishes "on a balance of probabilities that the motor vehicle was not parked, standing or stopped as described in the penalty notice."[46]

Provincial Regulation 333/07 under the *Municipal Act* and Regulation 611/06 under *The City of Toronto Act* prohibit the issuance of parking tickets, once the AMPS by-law is enacted for parking by denying the application of the Provincial Offences Act, even though environmental legislation both in Ontario[47] and in the United States[48] do provide for concurrent AMPS and prosecution.

In *R.v Wigglesworth* Madame Justice Wilson characterized minor traffic violations as offences coming within the ambit of s.11 of the Charter of Rights. Nevertheless, she went on to state that:

> Proceedings of an administrative nature instituted for the protection of the public in accordance with the policy of a statute are also not the sort of 'offence' proceedings to which s.11 is applicable.[49]

The case of *Martineau v. Canada (Minister of National Revenue*)[50] has since set down three criteria for distinguishing offence proceedings from administrative proceedings , the latter not being subject to Charter scrutiny for infringements of the presumption of innocence, or the protection against double jeopardy . These criteria are : (1) the objectives of the enabling legislation and the AMP in particular; (2) the purpose of the sanction; and (3) the process leading to imposition of the sanction.[51] *Martineau* involved an appeal of a forfeiture order of $315,000, the deemed value of goods which had been exported contrary to the *Customs Act*. The Minister of National Revenue had applied to examine Martineau for discovery and he challenged the application as a violation of his right against self-incrimination under subsection 11(c) of the Charter of Rights. As with the right to be presumed innocent and to be protected from double jeopardy, the right against self-incrimination, at least under section 11 of the Charter, depended upon whether Martineau was charged with an offence. The Supreme Court of Canada concluded that Martineau had no section 11 Charter protection because he was not charged with an offence, but was involved in an administrative proceeding.

Turning to the first criterion, the Supreme Court in *Martineau* established for distinguishing an offence from an administrative proceeding i.e. the legislative objective, the stated purpose of AMPS as expressed in the Regulation "shall be to assist the municipality (*or* "City" *in the case of Toronto*) in regulating the flow of traffic and use of land, including highways, by promoting compliance with its by-laws respecting the parking, standing or stopping of motor vehicles."[52] It is immediately apparent that this expression of legislative purpose is consistent with the profile of regulatory, as opposed to criminal law.[53] The emphasis is on preventing future harmful consequences rather than denouncing actions which are morally reprehensible. The legislative objective of compliance and prevention does not begin to assume the character of criminal law just because it includes an element of deterrence. Mr. Justice Fish in *Martineau* considered the fact that the ascertained forfeiture was intended to produce a deterrent effect irrelevant to the determination of the nature of the proceeding.[54] Indeed, subsequent decisions affirm that general deterrence is a legitimate objective of AMPS.[55]

Turning to the purpose of the sanction itself, the objective of AMPS, like the objective of the forfeiture order upheld in Martineau, is to facilitate compliance by creating a less costly and efficient procedure for enforcing infractions of the law. Within the $100 cap set for the AMP under the Regulations, the actual monetary penalty is set by the municipality/City [56].

This distinguishes the AMPS from Part II parking tickets under the *Provincial Offences Act (Part II)* Under Part II, the set fine is the responsibility of the Chief Justice of the Ontario Court of Justice.[57] This enables the administrative penalty to more closely reflect the changing needs of the municipality/City.

An important part of the Court's determination in *Martineau* that the penalty was regulatory as opposed to criminal, was the finding that the forfeiture order was arrived at not by a discretionary judgment made by an adjudicator after taking into account the nature of the reprehensible act, general and specific deterrence, rehabilitation, remorse, a previous record and other mitigating and aggravating factors normally considered by sentencing court, but was the product of a simple mathematical calculation imposed in advance by the legislation itself [58] This 'slide rule' penalty determination has been adopted in Ontario's 2007 Environmental Penalty Regulation,[59] companion Guideline for Implementing Environmental Penalties and the Procedure for the Calculation of Monetary Penalties.[60] It operates as follows: A base penalty is modified upwards or downwards by a fixed percentile, depending upon a number of factors set out in the Regulation and accompanying Regulatory Guide and Procedure. Environmental contraventions tend to be more varied and complicated than parking infractions, so the number of factors which may affect the base penalty , such as the nature of the contravention, and the efforts to

effect remediation, abatement and prevention are quite extensive and largely inapplicable to parking infractions. Nevertheless, some of the factors could be incorporated into the determination of the appropriate parking penalty. These could include the history of compliance [61] and the reasons for non-compliance.[62] Neither the AMP Regulations for the municipalities or the City of Toronto, nor the Vaughan By-Law, give any indication of how the actual penalty is arrived at, though as mentioned earlier, the Vaughan By-Law limits the grounds for adjusting or cancelling the penalty to circumstances where the recipient of the penalty can establish on a balance of probabilities that the vehicle was not parked, standing or stopped and undue hardship.

Imposing less discretion in the calculation of the penalty, while at the same time opening up the grounds to account for mitigating circumstances, should however, allow for local variations in available service within the Province. For example, in the City of Vaughan parking enforcement officers are not equipped with computers in their vehicles to perform searches of previous non-compliances.[63] One would hope that they could phone in to a central location and readily obtain this information, but the efficiency of that alternative may vary between cities. Practically, issuing the AMP anywhere but at the time and at the scene of the parking infraction would pose the risk that parking enforcement would be less effective. Vaughan for example, recently experimented with

serving AMPS on the registered owner of a vehicle after the infraction was concluded and the results were unsatisfactory because some of the owners were out of town, while others were numbered companies, with addresses but no one present to receive service when it was attempted.[64]

With respect to reducing the base penalty by a defined percentile, as with increasing the base penalty for non-compliance history, the municipal by-law would be a better instrument for defining whether a percentile reduction is warranted and if so what the quantum should be. Enforcement tools and purely local characteristics will vary from municipality to municipality. The number and type of enforcement tools and local characteristics could very well demand a different percentile of reduction from one municipality to the next, or in some cases, no reduction at all. The City of Vaughan for example, does not have parking meters or paid parking lots, though it might need to introduce these features as the population grows.[65] Vaughan needs the flexibility to introduce reductions should the need and their service increase, but perhaps at the moment they may not require much in the way of reductions given the relatively small number of legitimate excuses for parking illegally as compared to a bigger city such as Toronto.

The third and last criterion for distinguishing offence and administrative proceedings identified in the *Martineau* case is the process leading to

imposition of the sanction. The process set out in the AMPS Regulations for parking infractions is to substitute administrative officers for courts as the reviewing authority and restricts further appeals from the Hearings Officer's decisions.[66] As mentioned earlier, AMPS do not expressly provide the recipient of the penalty with any opportunity to be heard at the initial stage of review by the screening officer, only at the second stage when the Screening Officer's decision is reviewed by the Hearing Officer.[67] The Vaughan By-Law, in providing an opportunity for a meeting at the initial review with the Screening Officer, creates a mediation-like process and indeed some Screening officers are receiving mediation training.[68] At the second review, the Hearings Officer must conduct proceedings in accordance with the *Statutory Powers Procedure Act.* This Act applies to administrative tribunals rather than courts.[69] Significantly, unlike courts, tribunals may admit into evidence oral testimony, even when it is not given under oath or affirmation as well as all relevant documentation, unless the testimony or documentation is inadmissible by reason of a legal privilege or under statute.[70] This less formal process at the second review, would allow the introduction for example, of opinion and hearsay which would be inadmissible in a court of law.

Engaging administrative officers and restricting the right of appeal

from their decisions, conducting informal hearings where witnesses may not be required to attend and where, in any event, the rules of evidence generally won't apply, exhibits the hallmarks of an administrative rather than a judicial process.

Other indicia which would point away from a judicial process such as the City of Vaughan's explicit reversal of the burden of proof should be approached with more caution. As the authors of *Regulatory and Corporate Liability* have pointed out, procedures should not be used to bootstrap a scheme which is outside of the protections guaranteed under the Charter of Rights .[71] . In the authors' view, the procedures which contravene the protections guaranteed in the Charter should not be used as the basis for justifying the Charter contravention, lest legislators would be rewarded for defying the Charter of Rights.

Nevertheless, it could equally be said that the reversal of the burden of proof warrants some favourable consideration as a means of containing the length of the review proceedings, thereby further narrowing the gap between the date of the notice of infraction and the scheduled review. If the mere request for a review of an AMP could trigger a hearing at which the municipality or the City had to demonstrate beyond a reasonable doubt a parking infraction, hearings would be extended, enforcement officers would spend more

time away from the locations they need to be to monitor parking compliance and more administrative reviewing officers would have to be hired to handle the greater workload. The situation would be much the same as it is now in the traffic courts. The Charter of Rights, to paraphrase U.S. Judge Richard Possner in the *Van Harken* case[72], should not become a straitjacket, preventing governments from experimenting with more efficient methods of delivering government services. A similar sentiment was expressed by the Supreme Court of Canada when it said in the *Fitzpatrick* case that “The Charter was not meant to tie the hands of the regulatory state.”[73] In *Fitzpatrick* the Court rejected an argument that the section 7 Charter right not to be denied security of the person except in accordance with principles of fundamental justice, prevented authorities from using fishermen’s logs showing how much the fishermen caught as part of a prosecution for overfishing. The logs were part of a regulatory scheme which the fishermen voluntarily agreed to comply with as a condition of their fishing licences. While the information supplied in the logs was potentially incriminating, the fish quota system would have collapsed without it.

Fairness to the recipient of the AMP can be preserved even with a reversal of the burden of proof, because the Hearing Officer maintains the power under the *Statutory Powers Procedure Act* to

summon the municipal enforcement officer to the hearing and with the informal procedures applicable at such a hearing, there is ample opportunity to inquire into any matter the recipient of the penalty wishes to raise.

On balance, Ontario's AMPS for parking infractions meets constitutional standards. The objectives of the law are to further compliance rather than punish wrong-doing. The sanctions are meant to expedite the compliance objective through administrative processes which confer reviewing authority to administrative rather than judicial officials, limit appeals and dispense with the formalities for introducing evidence in courts of law. The penalties are relatively minor, there are avenues of review and an opportunity to confront the AMPS enforcement officer at least at the second review.

Some refinement of AMPS through the municipal by-laws themselves might bring greater efficiencies and further advance the compliance scheme while meeting public expectations for a fair process. Municipalities could be empowered to permit the AMP enforcement officer to adjust the base penalty by a defined percentile upwards when the AMP is initially served, to recognize a previous history of non-compliance. This would better secure compliance by demonstrating that repeat infractions are dealt with more seriously, thereby making it less likely penalty

recipients will take calculated risks. Any adjustment upward at the review stages would discourage penalty recipients from challenging the penalty notice and for that reason would be fundamentally unfair. The discretion on review could also be more clearly defined by requiring a downward adjustment of the base penalty within a defined percentile to reflect factors which do not fully negate the contravention of the parking by-law and may not be fully apparent to the AMPS enforcement officer affixing the penalty notice on an empty vehicle. Setting one defined percentile reduction for any and all mitigating factors the reviewing officer accepts, would ensure that the effort to inject necessary fairness into AMPS does not overly complicate the review process. Attempting to define the mitigating factors in advance would be unrealistic since they are many and draftspersons are unlikely to capture them all. There is no need for any reduction of the base penalty at the point that the AMP is initially served, since assuming the enforcement officers have sufficient information to conclude that there are extenuating circumstances, they could exercise their discretion and withhold issuance of the AMP notice. The exercise of their discretion can be controlled through internal guidelines.[74]

Increasing the grounds for review of the AMP should however, be accompanied by reversing the burden of proof for parking infractions throughout the province. Requiring the recipients of the penalty to prove the grounds on a balance of probabilities and requiring that the notices of

penalty make it clear that the recipients have that onus if they choose to review the penalty, would discourage frivolous challenges designed to delay proceedings and undermine the orderly disposition of AMPS.

III. APPLICABLE PRINCIPLES OF ADMINISTRATIVE LAW

Quite apart from the constitutional analysis, the summary review procedures for those persons who wish to contest a notice of a parking infraction must be carefully scrutinized to ensure that the imposition of AMPS and its review, accord with the principles of procedural fairness as enunciated in *Baker v. Canada (Minister of Citizenship and Immigration)*[75]. In this regard, consideration must be paid to the following non-exhaustive factors:

A. the proximity of the administrative process to the judicial process;

B. the nature of the legislative scheme**;**

C. the impact of the decision on the person affected**;**

D. the legitimate expectations of the person affected;

E. the deference to be paid to the decision- maker .[76]

Examining each factor in order, the following analysis and conclusions emerge:

A. PROXIMITY OF THE ADMINISTRATIVE AND JUDICIAL PROCESSES;

There is no doubt that the administrative process for reviewing an AMP is distinct from that which would be applied by a court in a provincial offence.

As described above, the reviewing officers - that is, the Screening Officer and the Hearing Officer are not judicial officials and under the Regulations they are appointed by the municipality. The first stage of review by a Screening Officer does not require any form of hearing and the City of Vaughan has approached this Regulatory provision by allowing the recipient of the penalty to attend a meeting with the Screening Officer. Since the Enforcement Officer is not required to attend, the process is not adversarial as in a court, but more in the nature of a mediation.[77] The second stage of review according to the Regulations does require that the Hearings Officer grant the requester an opportunity to be heard. However, the rules of evidence are not those of a court and the hearings process is less formal.

One resemblance between the AMPS enacted for parking infractions in Ontario and a judicial proceeding is the apparently open-ended discretion given to the reviewing authorities in determining the penalty that is actually imposed, albeit within the very small range of up to $100. It is difficult however, to conclude that this resemblance should be determinative when there is no indication that traditional sentencing principles –i.e. specific and general deterrence, rehabilitation, the nature of the act under consideration, for example, would all be weighed to the exclusion of any other factors, as it would in a court proceeding. The authors of a 2008 discussion paper prepared by the Administrative Justice Office of the

Ministry of the Attorney General for British Columbia concluded that an AMP scheme may give a statutory decision maker discretion as to whether to impose a penalty and/or a discretion about the amount of the penalty to be imposed. [78]

B. THE NATURE OF THE LEGISLATIVE SCHEME

As indicated above, [79] the express legislative purpose in the Regulations implementing the AMPS is to help the municipalities to control traffic and land use by promoting compliance with parking by-laws, not to punish wrongdoing.

C. THE IMPACT OF THE DECISION TO IMPOSE THE AMP ON THE PERSON AFFECTED

This indicator is by no means determinative of whether decision makers have any obligation to act judicially and the extent of their obligation if one exists. [80] This is exemplified by more recent cases such as *Martineau* [81] in which a forfeiture order of $315,000 was not sufficient to invoke the Charter protection against self-incrimination .In *Lavallee*[82] a maximum AMP of one million dollars as well as non-monetary sanctions such as life-time trading bans were not sufficient to invoke any obligation to apply the laws of evidence applicable to judicial proceedings. Had the criminal sanction of imprisonment been available, there would, on the other hand, have been an obligation to act judicially. [83] The AMPS for parking infractions have relatively small maximum monetary penalties as well as

the potential to withhold driving privileges if the penalties are not paid. The Law Reform Commission of Saskatchewan in a Consultation Paper on Administrative Penalties in June of 2009 concluded from the case law that since stringent procedural safeguards were reserved when matters of serious import were at stake, "…close scrutiny and appeal rights may not be necessary or appropriate if the penalty is small."[84]

D. THE LEGITIMATE EXPECTATIONS OF THE PERSON AFFECTED

There are a number of reasons why vehicle owners and operators may wish to contest an AMP .The AMP Regulations 333/07 and 611/06 leave the grounds for cancellation or reduction of the AMP to the municipal by-law.[85] The Vaughan By-Law 156-2009 includes two grounds for cancellation or reduction- negating on a balance of probabilities the allegation in the penalty notice and undue hardship.[86] The City of Brampton Committee of Council in their report earlier this year, [87] recognized that parking violations could be legitimately challenged on a number of grounds outside of the accuracy of the allegations in a penalty notice. These grounds included:

- Failure on the part of a municipality to keep a record of a valid application for an overnight parking pass ;
- Road construction forcing vehicle owners and operators, for lack of alternatives, to park in contravention of parking by-laws.

To this list one could add other legitimate reasons for reduction or cancelation which would not qualify as grounds for cancellation or penalty

reduction under the Vaughan By-Law. These would include a broken parking meter which would not accept payment. The vehicle would, as the allegation in the notice alleged, be parked in a location in which a valid ticket for that time was not in effect, but there would be some extenuating circumstances explaining the non-compliance. Similarly, if someone had an injured or pregnant person in need of urgent medical attention, the last thing that the vehicle operator would be thinking about when stopping in front of a hospital or clinic would be whether he/she was stopping in compliance with the parking sign. The City of Toronto has recently placed on its website a previously confidential set of guidelines for cancelling parking tickets.[88] Some of the additional grounds for cancellation include:

1. vehicles on delivery;
2. official vehicles including city or municipal vehicles;
3. utility vehicles such as Canada Post, Bell Canada, public utilities;
4. security companies and armoured cars;
5. tour buses;
6. religious observance;
7. stolen vehicles;

Legitimate expectations should include the ability to challenge AMPS for all the above grounds and because not all grounds can be anticipated in advance, a penalty recipient should be permitted to raise any grounds. If the law is applied blindly without any consideration of mitigating circumstances, drivers may lose respect for it. The challenge to the AMP however, may not deserve a full cancellation of the penalty. After all, traffic and land use control may demand that in densely populated locations if, for example, the parking meter isn't working, or construction or

maintenance of a transmission line or light fixture is underway, the driver should find an alternative location to park. The law recognizes that drivers in particular, assume additional regulatory responsibilities when they apply for their licence. This was explained by Mr. Justice Cory in the *Wholesale Travel case*[89], where he cited with approval an article from Professor Webb[90] :

> Before a regulator will authorize a regulatee to engage in controlled activities, the regulatee must agree to abide by a set of rules, and must be found fit to carry out the regulated activity. A driver's licence is a good example of such an arrangement. In effect, this arrangement establishes and certifies that the regulatee knows the standards which he or she must meet, is capable of meeting them, and accepts that should his or her conduct fall below these standards, he or she may be subject to administrative actions and penalties prescribed in legislation, according to procedures which take into account the special knowledge of the regulatee. The fact that an accused is participating in a regulated activity and has met the initial "entrance requirements" leads to a legally imposed or assumed awareness on his or her part of the risks associated with that activity.

E. DEFERENCE PAID TO THE DECISION-MAKER

This particular criterion has limited application to AMPS as the municipal enforcement officer and reviewing authorities have no particular expertise which would warrant any additional flexibility in the procedural safeguards.

F. OTHER CONSIDERATIONS

1. Independence and Impartiality

Aside from the above factors, consideration must be given to the extent to which administrative law principles require that the reviewing authorities, in this case, the Screening and Hearings Officers, are

independent and impartial as would be expected of judicial authorities. Mr. Justice Gonthier, in giving his opinion in the Supreme Court of Canada case of *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)*[91] stated the following:

> The three main components of judicial independence, namely security of tenure, financial security and institutional independence, were identified in Valente.[92] …. The purpose of these objective elements is to ensure that the judge can reasonably be perceived as independent and that any apprehension of bias will thus be eliminated. Independence is in short a guarantee of impartiality.
>
> The principles developed by this Court in relation to judicial independence must be applied under s. 23 of the Charter. That does not mean of course that the administrative tribunals to which s. 23 applies must be in all respects comparable to courts of law. As is the case with impartiality, a certain degree of flexibility is appropriate where administrative agencies are concerned.

The Supreme Court has recognized that unlike courts, the degree of independence which tribunals possess is very much within the discretion of Parliament and the legislatures. In *Ocean Port Hotel Ltd. v. British Columbia*[93] the Court stated:

> …Ultimately, it is Parliament or the legislature that determines the nature of a tribunal's relationship to the executive. It is not open to a court to apply a common law rule in the face of clear statutory direction. Courts engaged in judicial review of administrative decisions must defer to the legislator's intention in assessing the degree of independence required of the tribunal in question.
>
> This principle reflects the fundamental distinction between administrative tribunals and courts. Superior courts, by virtue of their role as courts of inherent jurisdiction, are constitutionally required to possess objective guarantees of both individual and institutional independence. …
>
> Administrative tribunals, by contrast, lack this constitutional distinction from the executive. They are, in fact, created precisely for the purpose of implementing government policy.

> Implementation of that policy may require them to make quasi-judicial [page795] decisions. They thus may be seen as spanning the constitutional divide between the executive and judicial branches of government. However, given their primary policy-making function, it is properly the role and responsibility of Parliament and the legislatures to determine the composition and structure required by a tribunal to discharge the responsibilities bestowed upon it. While tribunals may sometimes attract Charter requirements of independence, as a general rule they do not. Thus, the degree of independence required of a particular tribunal is a matter of discerning the intention of Parliament or the legislature and, absent constitutional constraints, this choice must be respected.

There are different legislative models for promoting the independence of administrative tribunals. The Chief Review Officer under C.E.P.A.[94] is appointed to hold office during good behaviour for a term of not more than three years, but may be removed by the Minister at any time for cause. This model would set a more onerous standard upon the Minister for removal of the Officer thereby ensuring a greater degree of independence. A simple notice of termination would not suffice, but would need to be accompanied by sufficient information to explain why the Officer lacked good behaviour , a dialogue, or some form of independent inquiry.[95]. The AMPS Regulations on the other hand, have given the municipalities more freedom to develop their own safeguards for independence in decision-making. They require that the municipalities develop policies and procedures to prevent political interference in the administration of the system, as well as conflict of interest guidelines and prohibit the enforcement officer issuing the penalty notice from accepting payment in respect of the penalty.[96] They also require that the appointment of the Hearing Officer be consistent with the conflict of interest guidelines

developed and that the Hearing Officer conduct the hearing in an impartial manner.[97] The City of Vaughan has passed a By-Law establishing the position of Screening and Hearings Officers and empowering City Council to make the necessary appointments. The By-Law provides that members of City Council and relatives are ineligible for appointment as a Screening or Hearings Officer.[98] It further makes it an offence to attempt directly or indirectly to influence Screening and Hearings Officers.[99] While the By-Law does not achieve the same standard of independence for the reviewing officers as the Chief Review Officer under C.E.P.A., nor does it implement detailed conflict of interest guidelines, it should prove to be sufficient to meet acceptable current standards of practice in administrative law.

The Saskatchewan Law Reform Commission in their 2009 Consultation Paper on Administrative Penalties[100] observed that few of the laws authorizing Saskatchewan administrative penalties provided for decisions to be made by an adjudicator who was independent of the regulator who administered the legislation authorizing the penalties.

In *Van Harken*, the U.S. Court of Appeals, in denying a constitutional challenge to the administrative penalty system for parking infractions in Chicago, made the following statements which are equally applicable to the Ontario AMPS for parking infractions:

> The plaintiffs also object to the fact that the hearing officers are hired by, and can be fired at will by, the City's Director of

> Revenue, who may want to maximize the City's "take" from parking tickets. Actually, this cannot be assumed. The Director of Revenue is appointed by and serves at the pleasure of the Mayor, whose concerns transcend the collection of parking fines. The enforcement of the parking laws is not merely a program for raising revenues; it is also designed to facilitate traffic flow. Compliance, which produces no revenue, may be as important to the City as noncompliance, which produces revenue but also clogs the streets. Compliance is not reliably promoted by absence of fair adjudication of contested parking violations; indeed, if parking fines are assessed randomly, you might as well park illegally, as you are as likely to be fined if you park legally. And drivers are voters, and so cannot be treated with an utter disregard for their predictable indignation at being fined for parking violations that they did not commit.

Judge Posner goes on to point out that the hearings officers have no financial stake in the outcome. He then observes that the plaintiffs' argument would be slightly stronger if the Director of Revenue or his subordinates were hearing these parking cases, but even in that event,

> …the mere fact that an administrative or adjudicative body derives a financial benefit from fines or penalties that it imposes is not in general a violation of due process…[101]

Professor Gerrard of Columbia University, in his unpublished paper on the *Reform of Sanitation Laws in New York City* observed that:

> Where simple fairness rather than pressure from above is concerned, there is no reason to believe that hearing officers are less fair-minded as a group than judges.[102]

2. *Right of Appeal*

While there is no legal or constitutional requirement that an appeal should exist from any decision made by a statutory delegate, the principles of good public administration usually require that at least one level of appeal exist with respect to any delegate's decision.[103] The AMPS Regulations for

parking in Ontario satisfy this general rule of practice since the AMPS enforcement officer's penalty is subject to review by the Screening Officer and the Screening Officer's decision is subject to review by the Hearings Officer. In British Columbia, the *Local Government Bylaw Notice Enforcement Act*,[104] set up a type of AMP enforcement scheme which allows for appeals to qualified adjudicators whose decisions reached, on a standard of balance of probabilities, are protected from judicial review by a strong privative clause with the exception of errors of law. The cities of West and North Vancouver, as well as the District of North Vancouver, have used this legislation since 2004 and an evaluation of an eight- month pilot project found that the system resulted in fewer disputes, faster disposition of disputes and improved rates of fine payment. [105]

3. Written and Or Oral Representations

The AMPS Regulations for parking do not specify whether the review process before the Screening and or Hearings Officer can be written rather than oral. The *Statutory Powers Procedure Act* which expressly applies to the hearing before the Hearings Officer only, permits written hearings if the rules for the tribunal deal with written hearings.[106] The United Kingdom has enacted a civil penalty system which recognizes the right of the recipient of the penalty to make representations in writing.[107] Giving recipients of penalties the option to make their representations in writing could further expedite reviews. Canadian law accepts that while

there may be a right to a hearing, the duty to be fair does not necessarily mean an oral hearing is required.[108] Careful consideration would have to be given however, to the question of whether or not a written submission either electronically or in writing, would increase the number of requests for review of the initial AMP. Section 17.1(3) of the Provincial Offences Act was introduced to eliminate the mail-in process of requesting a trial and replacing it with a personal attendance requirement. Legislators were anxious to avoid abuse of the mail-in provision by people who had no intention of ever truly defending themselves but hoped to get their payments delayed or nullified based on attrition. [109]

IV. **CONCLUSIONS**

While Regulations 333/07 and 611/06 under the *Municipal Act* and *City of Toronto Act* respectively, meet minimum standards of constitutional law, they could achieve greater compliance if a base penalty was set, with the ability of the AMPS enforcement officer, in the case of previous non-compliance history, to increase the initial AMP by a pre-set percentile . Similarly, legitimate expectations of fairness could be better achieved if reviewing officers have the ability to reduce the AMP by a pre-set percentile upon any ground that the reviewing officers considered warranted such a reduction. Written representations should be considered as a means of challenging an AMP thereby relieving both recipients of

AMPS and the reviewing officers of setting aside time for personal attendance.

Finally, if as is presented in this report, AMPS offer an efficient, fair and economical way of achieving compliance with parking infractions, there should be no need for any concurrent prosecution option under the *Provincial Offences Act.* Municipalities in more remote areas of the Province may understandably object that they do not have either the demand or the resources to accommodate this new program and would prefer to rely on the existing system of relying on the police and justices of the peace. The *Municipal Act* however, should provide some relief as it permits a municipality to enter into an agreement with one or more municipalities or local bodies, including local authorities, to jointly provide for their joint benefit, services which they would have the power to provide within their own boundaries.[110] To put it more simply, municipalities can use the enforcement officers, notification forms, communications systems, computer data bases and reviewing officers of other municipalities, whether neighbouring or not provided there is agreement between the municipalities involved.

With respect to sub-section 3(3) of the AMPS Regulations under both the *Municipal Act* and *City of Toronto Act* which prohibit the designated AMPS by-law from applying to its system of disabled parking, a distinct and

higher base penalty could be added to reflect the significance attached to non-compliance with disabled parking requirements . As noted in the flying tire case,[111] the significance of the contravention and the stigma attached to it does not, in and of itself dictate greater safeguards under the Charter of Rights. If however, in the case of disabled parking, remedial orders are required or imprisonment should, as a matter of public policy, be considered an alternative, AMPS would have to remain inapplicable both as a matter of public policy and because any real risk of imprisonment would open AMPS to serious constitutional challenge. Disabled parking could be subject to Part III of the *Provincial Offences Act*.

V. ENDNOTES

[1] R.S.O.1990,c.P.33
[2] 2006,c.32,Schedule.A,s.45
[3] S.O.2001,c.25
[4] 2006,c.11 Schedule A ,s.81
[5] David J. Potts , *"Municipal Systems of Administrative Penalties" , Prepared for the 2009 Municipal Court Managers' Association Annual Conference May 31-June 3, 2009*, unpublished at 2-3
[6] Angelo Cristofaro, as quoted in the *Globe and Mail*, Saturday April 10,2010 "Trimming the Fat from Toronto's Police Budget ", by Kelly Grant , at A12
[7] Courts of Justice Act R.S.O.1990,c.C.43,s.39(2)
[8] Online :http://www.fin.gov.on.ca/en/publications/salarydisclosure/2009 (last accessed 4 May, 2010)
[9] Online: http://www.ontariocourts.on.ca/jpaac/en/qualification.htm (last accessed 28 March,2010)
[10] "Fairer and Better Environmental Enforcement,Summary of Responses and Government Response to the Consultation " , held from 21st July to 14th October 2009, February 2010 at 4, par.5 ,online:http://www.defra.gov.uk (last accessed 10 May, 2010); Richard B. Macrory '*Regulatory Justice :Making Sanctions Effective* .'(November 2006) at 43 online: http://www.bis.gov.uk/files/file44593.pdf (last accessed 10 May, 2010)
The U.K. results on the public interest in a process for challenging AMPS was confirmed in an interview the author conducted on May 18, 2010 with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement, for the City of Vaughan.
[11] **Note 2,** 2006,c.32,Sch.A,s.45
[12] **Note 4,** S.O. 2006,c.11 Schedule A, s.81
[13] June 30, 2009
Online:http://www.city.vaughan.on.ca/vaughan/departments/enforcement/administrative penalties.cfm (last accessed 2 May, 2010)
(Last accessed 2 May, 2010)

[14] Report of the Committee of Brampton City Council , February 17, 2010 at page 5 (Report of Council)
[15] **Note 14,** *Report of Council* , February 17, 2010 at 5
[16] **Note 10**, Author's interview of May 18, 2010 with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement, for the City of Vaughan.

[17] Ramani Nadarajah, "Environmental Penalties:New Enforcement Tool or the Demise of Environmental prosecutions?" in Stanley Berger and Dianne Saxe eds. *Environmental Law The Year in Review 2007* (Aurora, Canada Law Book, 2007) 111at 114
[18] Michael Gerrard, "Enforcement of the New York City Sanitation Laws: Decriminalization and Court Reform" , *Fund for the City of New York ;unpublished September, 1976* and telephone interview with Professor Gerrard, Columbia University March 18, 2010
[19] *Van Harken et al. v City of Chicago* 103 F.3d1346;1997 U.S. App.Lexis 172 (U.S.C.A. Seventh Circuit) at 1349-50 *(Van Harken)*
[20] *Van Harken* ,**Note19** at page 1351
[21] Schedule B to the *Canada Act 1982*, (U.K.) 1982, c. 11
[22] John Swaigen, *Regulatory Offences in Canada, Liability and Defences* (Toronto, Carswell 1992) at p.18 see further *R v. Fitzpatrick* (1995) 18 C.E.L.R.(N.S.)237(S.C.C.)at par. 34 as it relates to s.7 of the Charter of Rights and the protection against self-incrimination and par. 49 as it relates to s.8 of the Charter and the protection against unreasonable search and seizure; *R.v Richard* [1996] 3 S.C.R. 525 at par. 30 and *Rv. Transport Robert* (1973) Ltée (2004), 234 D.L.R. (4th) 546, leave to appeal to S.C.C. refused 236 D.L.R. (4th)viii both of which deal with s.7 of the Charter .
[23] *R.v Wholesale Travel Group Inc.* [1991]3 S.C.R.154 at par.129 *(Wholesale Travel)*
[24] Wholesale Travel, **Note23** at par. 130 of Cory J.'s reasons
[25] *Rv. Transport Robert* ,**Note 22**
[26] R.S.O.1990,c.H.8 s.84.1(5)
[27] *Ontario Regulation 333/07 and Ontario Regulation 611/06* ;ss.9(2)
[28] Rule 20.10 & Rule 20.11 *Rules of the Small Claims Court* ,Justice Marvin A. Zuker, Ontario Small Claims Court Practice (Toronto, Carswell,2010)
[29] Re: parking see :*Toronto (City) v. Bowman (2002)* Carswell, Ont 5818; 2002 O.J. No.3803 (Ont.C.J.)at par.104 ; Re speeding offence : *London (City) v.Polewsky*,[2005]O.J.no.4500,202C.C.C.(3d) 257(C.A.);leave to appeal to the S.C.C. dismissed 2006 CarswellOnt 3307,[2006]S.C.C.A.37 (S.C.C)
[30] The Ontario Court of Appeal in *R.v Kanda* (2008), 289 D.L.R. (4th)304 (Ont.C.A.) *at par. 40* and *R.v Raham* [2010] O.J.No.1091 (Ont.C.A.)*at par.44* accepts that due diligence can be excepted as a defence by implication

[31] Vaughan By-Law 156-2009 , **Note13,** s.10.1 (10) (i) – (ii)**.**
[32] *R v. Fitzpatrick* (1995) 18 C.E.L.R.(N.S.)237(S.C.C.) at par.53 **Note 21**
[33] *Van Harken*, **Note19** at 1351, Similarly, the New York City Environmental Control Board advises on its website On line : http://www.nyc.gov/html/ecb/html/home/home.shtml,(last accessed March 18, 2010) that the inspector who wrote the violation notice will likely not be present though a lawyer for the building department will.
[34] **Note13**,s. 10.1(16)
[35] *Statutory Powers Procedure Act* R.S.O. 1990,c. S.22; at s.12(1)
[36] **Note 27** ;s.8(4)

[37] *Canadian Environmental Protection Act* (C.E.P.A).1999, c. 33, s. 260(1)
[38] 2009, c. 14, s. 126, in s.2 (definitions) and s.15ff. (review)
[39] **Note 27** ;s.8(1) subsection 3
[40] **Note 27**;s.8(1) subsection 4
[41] **Note 27**;s.8(1) subsection 5-6
[42] **Note 27**;s.8(1) subsection 7

[43] **Note 27** ;s.8(5)
[44] **Note 13** s.10.1(11)
[45] R.S.O. 1990, c.S.22; **Note 27** s.8(4) and **Note 13** , s.10.1 (17), **Note13**
[46] **Note13** , s.10.1(10)and (15)
[47] The inapplicability of the *Provincial Offences Act* once the AMPS Parking By-Law has been enacted is found in Section 4 of both *Ontario Regulation 333/07 under the Municipal Act and Ontario Regulation 611/06* of the City of Toronto Act **Note 13 .** Section 182.1(11) of the *Ontario Environmental Protection Act R.S.O. E-19 allows concurrent prosecution and issuance of AMPS Orders.*
[48] s. 7:1E-6.2(e) of the *New Jersey's Discharges of Petroleum and other Hazardous Substances 7 N.J.A.C.7:1E(2007)*
[49] *R.v Wigglesworth*[1987] 2 S.C.R. 541 *(Wigglesworth)* at par.22 of Madame Justice Wilson's reasons
[50] *Martineau v. Canada (Minister of National Revenue)* [2004] 3 S.C.R.737;2004 SCC 81 *(Martineau)*
[51] **Note 50**at par. 24 of Fish J.'s reasons
[52] **Note 27 ;**ss.3(2)The emphasis on compliance is further evident in s.6(b) which provides that the penalty shall "not exceed the amount reasonably required to promote compliance with a designated by-law"
[53] *Wholesale Travel* , **Note23**
[54] *Martineau* **,Note 50** at par.38 of Fish J.'s reasons.
[55] *Lavallee v Alberta (Securities Commission)* (2009) ABQB 17 at pars 157-163; *Euston Capital Corporation v.Saskatchewan Financial Services Commission [*2008] S.J.No.99 ;307 Sask.R.100 (Sask.C.A.) at par..51; *Re Cartaway Resources Corp.,*2004 SCC 26 [2004] 1 S.C.R.672

[56] **Note 27**, s. 6
[57] S.15(1) b of the Provincial Offences Act and the definition of "Set Fine ", section 1 **Note1.**
[58] *Martineau* **Note 50** at par. 62
[59] O. Reg. 222/07
[60] May 2007; online: http://www.ene.gov.on.ca./en/about/penalties/EPguidelines.pdf ;http://www.ene.gov.on.ca./en/about/penalties/BenefitProcedure.pdf (last accessed May 5, 2010)

[61] Ontario Regulation 222/07, s.9(1) 3 and s.11 and the Guideline for Implementing Environmental Penalties Appendix 3; online: http://www.ene.gov.on.ca./en/about/penalties/EPguidelines.pdf at Appendix 3 page 40.(last accessed May 5, 2010) For a full review of how the various factors influence the calculation of the monetary penalty see Stanley D. Berger, *The Prosecution and Defence of Environmental Offences,* (Aurora Ontario: Canada Law Book, 2010) at par. 7:50.20
[62] O. Reg. 222/07, **Note 59** , S.11
[63] **Note10** May 18, 2010 interview with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement City of Vaughan .
[64] **Note10,** May 18, 2010 interview with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement City of Vaughan
[65] **Note10,** May 18, 2010 interview with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement City of Vaughan
[66] **Note 27**,s.8(5)
[67] **Note 27** ss.8(3) and (6)

[68] **Note 10,** May 18, 2010 interview with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement City of Vaughan
[69] **Note 35**, s.3
[70] **Note 35** , s.15(1) and (2)
[71] T.L. Archibald, K. Jull and K. Roach, *Regulatory and Corporate Liability: From Due Diligence to Risk Management (* Aurora :Canada Law Book 2009) , par. 15:30:10.20.30

[72] *Van Harken* ,**Note19,** at page 1351
[73] *R.v Fitzpatrick* ,**Note 22** at par. 29
[74] *Current Parking Ticket Cancellation Guidelines* May 2010 made public by Toronto City Council June 8, 2010 Online: http://www.toronto.ca/pay-toronto-tickets/pdf/cancellation_guidelines.pdf (last accessed June 11, 2010)
[75] *Baker v Canada (Minister of Citizenship and Immigration*) [1999] 2 S.C.R 817*(Baker)*
[76] *Baker*, **Note 75** pars. 24-27
[77] **Note10,** May 18, 2010 interview with Janice Atwood-Petkovski, City Solicitor Commissioner of Legal and Administrative Services and Tony Thompson ,Director of Enforcement City of Vaughan .

[78] Administrative Justice Office of the Ministry of the Attorney General for British Columbia, *Administrative Monetary Penalties : A Framework for Earlier and More Effective Regulatory Compliance , A Discussion Paper* (2008) at page 5, Note2 online at: http://www.gov.bc.ca/ajo (last accessed 16, May 2010)
[79] **Note 52**
[80] *Minister of National Revenue v. Coopers & Lybrand, [1979] 1 S.C.R. 495 at 504-505*
[81] **Note 50**
[82] **Note 55** at pars. 123-124,149-150,163-165
[83] **Note 55** at par. 149
[84] The Law Reform Commission of Saskatchewan, *Consultation Paper on Administrative Penalties* ,June 2009 at page 22. online at: http://www.lawreformcommission.sk.ca/Papers.htm (last accessed May 16, 2010)
[85] **Note 27,** s. 8(1) 4 and 7
[86] **Note13**
[87] **Note14** , at 3
[88] *Current Parking Ticket Cancellation Guidelines* **Note 74**
[89] **Note 23** at par. 165 of Cory J.'s decision
[90] Kernaghan R. Webb, *Regulatory Offences, the Mental Element and the Charter: Rough Road Ahead* (1989), 21 Ottawa L. Rev. 419 at 452.See further R.v Fitzpatrick, **Note 22**

[91] *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)* [1996] S.C.J. No. 112 at pars. 61-62

[92] *Valente v. The Queen*, [1985] 2 S.C.R. 673
[93] [2001] 2 S.C.R. 781 at pars. 21-24
[94] **Note 37 ,** Canadian Environmental Protection Act (*C.E.P.A.)* , s. 245
[95] *Keen v. Canada (Attorney General),* [2009] F.C.J. No. 402 at par. 57
[96] **Note 27**, re: Guidelines s. 7(a)(b) re: Prohibiting direct payment to officer issuing AMP s.8(1)2
[97] **Note 27** , s. 11(2)
[98] City of Vaughan By-Law Number 157-2009, ss. 3 & 5
[99] **Note 98** s.6
[100] **Note 84** at pages 4-5
[101] **Note19** at pages 1352-53
[102] **Note18**, at page 58

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[103] Jones and DeVillars, *Principles of Administrative Law* , 5th ed. (Edmonton :Thomson Carswell, 2009) at 602
[104] S.B.C.2003, c.60
[105] As reported by the Ministry of the Attorney General for British Columbia Administrative Justice Office in their 2008 Discussion Paper on Administrative Monetary Penalties , **Note 78** at 16
[106] **Note 35** *s.5.1*
[107] *Regulatory Enforcement and Sanctions Act 2008* c.13 , ss.40 (2)c Online: http//www.opsi.gov.uk/acts/acts2008/pdf/ukpga (last accessed March 18, 2010)
[108] Jones and DeVillars **Note 103** at 281. e.g. *Suresh v Canada (Minister of Citizenship & Immigration* 2002 SCC 1.
[109] *Toronto (City) v. Bowman (2002)* **Note 29** at par. 72
[110] **Note3**, ss.19-20
[111] *Transport Robert*, **Note22**