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April 13, 2015

POA-AMP Consultation  
Ministry of the Attorney General  
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**Re: OTA Feedback on Administrative Monetary Penalty System Concept**

The Ontario Trucking Association (OTA) appreciates the opportunity to provide input on the Ontario Ministry of the Attorney General's (MAG) recent discussion paper that raises the potential introduction of an online administrative monetary penalty system (AMPS).

OTA began its approach to the AMPS issue from the perspective of whether the movement to an online system would be beneficial or instead hinder a trucking company's ability to dispute Municipal or Highway Traffic Act offences. Responses to the AMPS concept have been solicited from carrier representatives and legal professionals from within the membership of the association.

Below you will find general responses to the AMPS concept and attached are categorized comments and questions as captured from industry feedback that OTA feels require due consideration by MAG if any portion of the AMPS concept is to move forward.

General Comments:

- Based on how an AMPS functions, the legal and carrier communities would not support any penalties, outside of municipal parking tickets moving to an AMPS. To that point, carriers had a number of conditions that would need to be met before they would accept an AMPS for municipal parking infractions. These include bulk practices for non-points parking infractions and an exclusion of parking infractions carrying demerit and CVOR points.
- Carriers and legal professionals believe that movement toward an AMPS is an affront to the fundamental principles of natural justice and the right to be presumed innocent before proven guilty.
- The movement to an AMPS could potentially lead to reduced accountability of the enforcement community.
- An AMPS will eliminate discretionary powers and personal interaction between carriers and the enforcement community. This interaction is essential for the improvement of highway safety through education.

If opportunities present themselves as part of this review to modernize the existing court process, OTA would welcome the discussion. However, based on feedback to date, the AMPS concept is not suitable for addressing any of the concerns the trucking industry has with regards to the justice system.

OTA trusts you will find this input valuable and we would appreciate an opportunity to meet with MAG staff at the earliest convenience to provide additional feedback and understand the next steps in this initiative.

Regards,

Stephen Laskowski  
Senior Vice President

# OTA COMMENTS



## **OTA Comments on Exploring an Online Administrative Monetary Penalty System for Infractions of Provincial Statutes and Municipal Bylaws in Ontario**

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April 2015

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## **Fundamentals of a Justice System for the Trucking Industry**

- The concept of burden of proof without reasonable doubt is part of a legal foundation that needs to be maintained. Instead, the AMPS model appears to assign guilt first. This is a fundamental shift in judicial thinking and not supported by the trucking industry;
- The more serious the consequences that flow from the imposition of an AMPS (such as detrimental impact on a carrier's safety record, demerit points on a driver's record), the greater protection the alleged violator will require. This may include the right to receive the evidence relied on by the regulator, and the right to establish due diligence as a defense. It remains to be seen how an online system will be adequately equipped to protect alleged violators from wrongful imposition of an AMPS;
- The concept document speaks briefly to protections provided by the Charter of Rights and Freedoms in the existing court process, but further explanation is required for how these Charter Rights are not applicable to an AMPS;
- There will always be a need for personal interaction in the justice system. The proposed concept appears to be moving away from this necessity;
- The ability for trucking companies or their legal representation to question charges laid against them with either the issuing officer or the prosecutor needs to remain;
- The ability for early resolution needs to remain a key part of the system;
- The ability for carriers or their legal representatives to provide context and explain due diligence in their defense is key. This cannot be removed from the justice process;
- It is hoped that MAG will recognize the limits of the AMPS concept to trucking.

## **Accountability Within an AMPS**

- Occasionally the enforcement community can make errors when laying charges. As existing AMPS are currently applied, it is understood that that it's difficult to have an AMPS removed and the only options are to have the monetary value reduced. In trucking, should errors be identified in the laying of charges – or in the case of an AMP – it is critical they be corrected and, if necessary, have the incident stricken from the carrier's record. Has MAG considered how this functionality can exist within the proposed AMPS? In addition, there exists an opportunity for officers to continue issuing AMP's in error if a proper mechanism is not put into place for carriers to address what they feel are errors.
- Concerns were raised about the MAG document's lack of clarity in regards to ensuring the issuing of AMPS are not abused. In an AMPS concept there is concern that enforcement officers may have the opportunity to issue multiple AMPS to the point where financial harm or business continuance could be affected as a result of a single inspection or traffic stop. Checks and balances would need to be fully vetted to determine suitable protections for accused parties in all aspects related to this issue;
- The existing court system and carriers' ability to meet with the prosecutor, and the prosecutor's role in adding a level of checks and balances to offset abuses in laying charges needs to remain in place;
- The enforcement community has developed strong internal controls to ensure professional conduct and maintaining a balance of enforcement and education. Has MAG developed a plan with the enforcement community to ensure this remains the focus of truck enforcement in the province under an AMPS?

## **Issues of Revenue Generation vs. Improved Highway Safety**

- Without proper checks and balances, there is concern that an AMPS simply becomes an avenue for government to collect revenue (and in turn a cost of doing business for carriers), rather than correcting carrier safety culture and improving highway safety.
- Compounding AMPS penalties, as applied in other trucking regulatory frameworks, are not the solution to changing carrier safety culture.

## **Review Process, Separation of Powers and Review Qualifications**

- The form of review is critical. Since an online system is being considered, will it be a written review only? What are the qualifications of those reviewing the proposed AMPS, and what are the factors they will consider on review and, in particular, will due diligence be available?
- How will MAG assure that reviews are third party and unbiased? In related trucking-specific situations with AMPS-like functionalities (specifically in the United States), the reviewers are employed by the jurisdiction issuing the AMP. In many cases the reviewer works in the same department as the subordinates who have issued the AMPS. There are concerns over separation of power in this system;
- Trucking is a very specialized business and highly regulated. How will MAG ensure reviewers are not only unbiased, but also educated to the point where the review of submitted material is done with a degree of understanding about the trucking industry? For example, MTO's current system for on-road truck enforcement exhibits an accepted level of qualification and knowledge of the trucking industry. All officers are trained to North American standards for the inspection of drivers and vehicles. In order to maintain their ability to enforce the standards, officers must meet minimum experience criteria on an annual basis and must undergo continual refresher training. Is the MAG considering similar qualifications which would apply to the reviewers in the proposed AMPS?

## **Application of AMPS in CVOR Context**

- How will MTO treat the imposition of an AMPS on a carrier or on a carrier's driver and will it form part of the carrier's safety record;
- Should this concept move forward, which violations will be subject to an AMPS? Will the issuing of an AMPS be limited to administrative violations which currently do not attract CVOR or demerit points upon conviction, or will offenses considered safety related be included?
- Will there be publication of AMPS issued and for how long? Publication is important to the regulator for its deterrence effect, but also for the public when considering whether to hire a carrier as well as for carriers in determining what drivers to hire or to conduct business with others carriers;
- The Ontario Commercial Vehicle Operators Registration (CVOR) system for monitoring carrier safety performance is based on three fundamentals of carrier operations: collisions, convictions and inspections. Carriers are monitored to determine their overall safety performance and points are assigned against set thresholds for collisions, convictions and inspections based on a carrier's specific operation. The CVOR system does not currently have an avenue to monitor or assign points related to AMPS. This would require a systems change, which would require a cost-benefit analysis along with modeling to ensure the industry understands the potential impact on a go-forward basis.
- Simple tweaks to the existing CVOR system for necessary changes requested by the industry can come with a price tag in the millions of dollars. In this context, a total revamp of the CVOR to accommodate AMPS could be significantly more. Further, there are several key considerations currently in the pipeline for MTO to improve CVOR, and it needs to be understood whether an AMPS process would delay those improvements or require a complete redesign of the CVOR;
- The CVOR system's formulas for assigning safety scores are extremely complex. Hence, the information presented publically would need to be simplified to ensure a basic understanding for anyone reviewing a carrier profile. Should AMPS be published, how will the presence of the AMPS be put in context to the more critical CVOR variables (collisions, convictions and inspections) in order to ensure it does not negatively impact the public's or courts' image of a carrier's safety performance?
- The CVOR system of collisions, convictions and inspections follows similar principles adhered to by all jurisdictions across Canada. Should MAG move forward with the AMPS concept, it would put Ontario's system out of sync with the rest of the Canadian jurisdictions in how Ontario monitors carrier performance. All of the Canadian jurisdictions are currently considering how to better align their carrier

profile systems and this would need to be taken into account to ensure these necessary and long overdue efforts are not disrupted nationwide;

- The industry would need to understand how an AMPS can positively impact the safety performance of a trucking company, while at the same time not negatively misrepresent the image of the carrier's actual on-road safety performance.

### **Impact of AMPS on Insurance**

- Should an AMPS go into effect, has MAG explored what types of consumer protection will be put in place to ensure insurance rates are not negatively impacted?;

### **HR Issues and Driver Shortage**

- An AMPS could make it even more difficult for carriers to hire drivers who are already in short supply as any AMPS, especially without context, would deter employment;
- MTO currently restricts information provided on a driver's abstract for collisions where an associated conviction is not present. Would the AMPS concept change this requirement as well?
- It's possible that a driver who appears to be a poor performer on paper because of AMPS is actually a good driver in everyday practice if the AMPS are purely administrative issues. Will MAG consider educational information to ensure against discrimination and restricted access to employment for drivers with administration AMPS?
- The industry is in the midst of a shortage of qualified truck drivers due to a multitude of economic and demographic issues. Increasing liability for drivers, without proper access to a fair justice system, would further discourage individuals from entering the industry.

### **Enhancement to the Court System Outside of the AMPS Concept**

- There appear to be other options outside of AMPS that MAG could explore in order to enhance the court process and make it more efficient. Is MAG willing to explore any of these options that might not be as cost prohibitive as an AMPS?

### **The Cost/Benefit of an AMPs System in the Trucking Context**

- As an example, it is understood the AMPS process developed for the Ministry of the Environment, yields an average of 10-15 per cent of charges that need to be reviewed. It is estimated that in the HTA environment specific to trucking the rate of charges that carriers choose to fight through the court system is in excess of 75 per cent. What is the comparative cost in developing a suitable AMPS for trucking considering the investment in personnel, processes and infrastructure required to do it properly?
- The issue of expediency has been raised as a selling point for an AMPS. It is understood that the existing review processes for some AMPS now can take up to 12 months. Is this more or less efficient than the court processes we have in place now?