



# ENFORCEMENT SERVICES BY-LAW & PARKING

## PARKING TICKET DISPUTES

### Court Proceedings

#### **Before the Court Starts**

Arrive at least 15 minutes before the starting time, with your Notice(s) of Trial. This will give you time to locate the hearing room specified on the Notice of Trial and to verify that the name of the defendant appears on the docket list posted outside the courtroom door. Below is a brief description of what may occur in court on your appearance date.

#### **Call to Order**

At the time noted for the session to start, the court clerk will call the court to order asking all participants to rise as the Justice of the Peace is escorted into the room. Once the Justice of the Peace has been seated, the clerk will start recording the proceedings.

#### **Recording the Proceedings**

All court proceedings are electronically recorded and the tapes are used to prepare typed transcripts which may be used for appeal or other purposes, or to listen to confirm information. As the equipment is sensitive, it is important that people attending in the courtroom refrain from talking or causing noise which may not only be distracting but also interfere with the quality of the recording.

#### **Prosecutor Calls the Order of Hearing**

Once the court has started, the prosecutor will call the cases. When you hear the defendant's name being called, walk up to the front of the court to the place indicated by the court clerk.

#### **Adjournments and Motions**

The Justice of the Peace will hear your request for a change of date and determine if your request can or should be accommodated. The Justice of the Peace may deny your request, whereby the original trial date stands or the Justice of the Peace may adjourn your case to a new date and time. If the case is adjourned, the court clerk should provide you with a new appearance date and time for your trial.

## **Plea of Guilty**

The prosecutor will call the defendant and/or agent to the front of the courtroom, the Justice of the Peace will read out loud the particulars of the infraction, ask you formally how you are pleading to the charge, and the court clerk will record your response on the court papers. The Justice of the Peace will register a conviction and then ask if you have anything to say.

At this point, you may wish to make a statement about the circumstances of the infraction, the penalty and/or ask for time to pay any fine imposed. The prosecutor may also be asked if he or she wishes to make a submission about penalty. Several outcomes are possible, including imposing the set fine amount, (the amount indicated on the Notice of Trial), adding court costs, or the Justice of the Peace may reduce the amount or waive the fine altogether. Where a fine has been imposed, the court clerk will ask you for the complete and current mailing address of the defendant to whom a Notice of Fine and Due Date will be mailed. Payment cannot be made at the court office.

## **Plea of Not Guilty**

### **Reading the charge and plea**

A full trial (presenting and weighing of evidence) is held once a plea of not guilty is given. The prosecutor will call you (the defendant and/or agent) to the front of the courtroom and ask you to remain standing while the Justice of the Peace reads out the particulars of the infraction and asks formally how you are pleading to the charge. The court clerk will record the response on the court papers.

### **Witness sworn**

The prosecutor will call the first witness (the officer) to take the witness stand. The clerk will administer the oath to the officer and the officer will then relate details of the infraction. The prosecutor may ask questions of the officer to ensure all information required as evidence is stated.

### **Defence questions**

When the prosecutor has no other questions of the witness, the questioning of the witness is given over to the defence. This procedure must be done in a question/answer format. 'How did..?', 'Where was...?', 'Did you...?'. The purpose of questioning the witness is to bring out evidence (under oath) that you may think is important to your case or to clarify information etc. You may, of course, choose not to question the officer.

### **Defence witness(es)**

After questioning the officer, the Justice of the Peace will ask if you wish to give evidence. If you do, you will be asked to go up into the witness stand and the court clerk will administer a sworn oath or affirmation. Unless you are sworn or affirmed, your statement cannot be accepted as evidence.

Once in the witness box you may present your facts with regard to the infraction. The prosecutor may also ask you questions. When you stand down from the witness stand you may have other witnesses that you wish to call to give evidence.

### **Summation**

After all witnesses have been called and questioned you will have the opportunity to make a statement with respect to all the evidence presented by summing up all the facts (or lack of facts). The prosecutor will also have the opportunity to make a submission after you are finished.

### **Judgment**

The Justice of the Peace has listened to the evidence presented by both the prosecution and the defence and will make a decision based on the merits of the case. If the evidence does not prove beyond a doubt that the infraction as charged was committed, the charge will be dismissed.

However, if the evidence does prove that the offence was committed, the Justice of the Peace will enter a finding of guilty and register a conviction.

### **Sentence**

The Justice of the Peace will ask you, then the prosecutor, if you have anything more to say with regard to sentencing (penalty imposed). The Justice of the Peace at this point is trying to determine a fair penalty and time to pay for the infraction based on any statement you have made, your financial ability, and any unusual circumstances which may have occurred at the time the infraction was committed.

The Justice of the Peace may impose the set fine or lesser penalty with or without costs, suspend sentence, or order no fine.

If a fine is imposed, the court clerk will ask for the complete and current mailing address of the defendant to whom a Notice of Fine and Due Date will be mailed. Payment cannot be made at the court office.

## **Failure to Appear at Your Trial**

Where a trial has been requested, a Notice of Trial issued, and the defendant fails to appear (or be represented) in court at the date, time and place set for the hearing, the defendant will be deemed not to dispute the charge.

The Justice of the Peace will examine the certificate of parking infraction and, without hearing evidence of the officer, enter a conviction in your absence, and impose the set fine for the offence if the certificate is complete and regular on its face.

A Notice of Fine and Due Date will be mailed to the defendant to the address provided at the time the trial was requested.

## **Overturing a Conviction or Sentence**

### **Appeal**

The appeal procedure for parking tickets is described in the Provincial Offences Act. A defendant may appeal the sentence (fine/costs), or the conviction (found guilty) or both the sentence and conviction and the prosecutor has the right to appeal an acquittal. The hearing of the appeal is presided over by a Justice of the Peace. **An appeal must be filed within 30 days of the conviction date.** If more than 30 days have passed, you will be required to file a Motion requesting an Extension of Time to File an Appeal.

### **Procedure**

Within 30 days of the conviction date you must:

1. Pay the total assessed fine and costs.
  1. If in plate denial, make your payment at the Ministry of Transportation.
  2. If not in plate denial, make your payment at the Enforcement Services counter located on the lower level of City Hall

2. Obtain proof of payment. If payment is made in person the cashier will provide you with a detailed receipt. However if payment was made by phone or internet and no receipt was provided, you may obtain a computer printout of your infraction, showing payment, from the Enforcement Services counter.
3. Complete a Notice of Appeal form. Print clearly and provide complete information. You will be required to return on your appeal date.

## **Motion to Extend the Time to File Appeal**

Where the time allowed to appeal has expired (more than 30 days from the date of conviction), the defendant or agent may apply to the Appeal court to extend the time for filing an appeal. Filing this motion does not stop enforcement of the unpaid fine (i.e. plate denial).

Your motion will be heard by an Intake Justice of the Peace In-Basket (meaning that the Justice of the Peace reviews the application without the defendant present) where they will decide to either grant or deny your request to extend the filing time. If your motion has been granted, the time for filing may be extended thirty (30) days from the decision date, allowing you to comply with the appeal procedure requirements as previously described.

### **Procedure**

Take the upper portion of the Notice of Fine and Due Date which provides details of the infraction or a computer printout of your infraction to the Enforcement Services counter located at the lower level of City Hall.

Request the documents to complete a Motion to Extend the Time to Appeal, print clearly on the forms, and provide all the information required.

## **Reopening**

The Provincial Offences Act under Section 19 provides for an alternate method of overturning a conviction or sentence. A defendant who was convicted without a hearing through no fault of the defendant may apply under this section to have the conviction struck **if an application is made within 15 days of becoming aware of the conviction.**

All reopening applications will be reviewed In-Basket by the Intake Justice of the Peace. Defendants do not have to wait to see a Justice of the Peace for the purpose of a reopening application.

Reopening applications will not be accepted if any of the following conditions exist:

- Defendant/agent appeared at trial
- Payment has been made
- Defendant was previously denied a reopening

If your reopening application is not accepted because of one of the conditions above, you will be referred to the Appeal Court to file an appeal and/or file an Application to Extend Time to Appeal.

**Note:** Section 88 of the Provincial Offences Act states: Every person who makes an assertion of fact in a statement or entry in a document or form for use under this act, knowing that the assertion is false, is guilty of an offence and, on conviction, is liable to a fine of not more than \$2,000.

### **Procedure**

Within 15 days of becoming aware of the conviction (as described above) take your Notice of Fine and Due Date to the Enforcement Services counter to make your application:

1. Complete an Application/affidavit for a Reopening and a Notice of Intention to Appear
2. Print clearly and provide a complete and current mailing address of the registered owner, for the purposes of mailing a Notice of Trial or a Notice of Fine and Due Date

The Intake Justice of Peace will review the application on an In-Basket basis and may choose to deny the application, strike out the conviction, accept your plea of guilty and impose the set fine, or strike out the conviction and order a new trial.

Once a conviction has been struck, any cases which were in plate denial due to unpaid fines are recalled.

Where a plea of guilty was accepted and a fine imposed, Enforcement Services will mail a Notice of Fine and Due Date to the defendant indicating the amount payable.

Upon receiving an order for a new trial, all required documents will be gathered, a trial date scheduled, and a Notice of Trial will be mailed to the defendant at the current mailing address provided by you on the Notice of Intention to Appear.

### **Motions for Extension of Time to Pay**

The Provincial Offences Act under section 66(6) allows a defendant to request an extension of time to pay the fine. The defendant must file the prescribed form with Enforcement Services and the motion shall be determined by an Intake Justice of the Peace on an In-Basket basis meaning the Justice of the Peace reviews the application without the defendant present.

#### **Procedure**

Take your Notice of Fine and Due Date to the Enforcement Services counter on the lower level of City Hall to make your application:

1. You must complete a Motion for Extension of Time to Pay, Form 125.
2. If you have more than one fine to extend, you must complete Schedule "A" for multiple convictions.
3. Print clearly and provide a complete and current mailing address of the registered owner for the purposes of mailing a Notice of Trial or a Notice of Fine and Due Date.

There are two possible outcomes of the Justice's review:

#### **Extension of Time to Pay Granted**

If you have been granted an Extension of Time to Pay for a parking matter you will be issued a new Notice of Fine and Due Date and the matter will be removed from plate denial if applicable.

#### **Extension of Time to Pay Denied**

If your request for an Extension of Time to Pay for a parking matter has been denied, your fine is due and payable in full immediately the Enforcement Services counter on the lower level of City Hall. If your matter is at plate denial, your payment must be made to the Ministry of Transportation.

### **What Do I Do If I Can't Attend a Court Date?**

Where you received an Offence Notice (ticket) and asked for a court date AND are seeking to change the first trial date given on the Notice of Trial issued by Enforcement Services, you must attend the Enforcement Services counter at least 3 business days prior to your scheduled court date and fill out the required Request for Adjournment form. This form will be presented to the Justice of the Peace in your absence and the decision to adjourn will be made at that time.

**This option is not available where you received a Summons to appear at court or where charges results from a collision or where you have already appeared at court on the charge.**

## **Terms**

### **Defendant**

The name of the defendant is always the name of the person or company who is registered with the Ontario Ministry of Transportation as being the owner of the vehicle plate. If you are not the registered owner but are the person who received the ticket and/or would like to contest it, you must obtain written consent from the registered owner in order to be able to do so.

### **Current Mailing Address**

Complete this address field with the address of the vehicle plate owner(s) registered with the Ministry of Transportation. If you have recently moved and have not changed your address with the Ministry, please list the current address of the registered owner of the vehicle.

### **Infraction Number**

The eight digit alpha-numeric sequence appearing on the Parking Infraction Notice (parking ticket) or the Notice of Impending Conviction.

### **Agent**

Any person who is not the registered owner of the vehicle plate is considered to be an agent regardless of the fact such person may actually have been the operator of the vehicle.

### **Ministry of Transportation of Ontario (MTO)**

The Ministry of Transportation of Ontario is the provincial ministry of the government of Ontario which is responsible for transport infrastructure and related law in Ontario.

### **Parking Infraction Notice**

A Parking Infraction Notice is the parking ticket that is found placed on the window of a vehicle.

### **Notice of Impending Conviction**

A Notice of Impending Conviction is the letter sent out to the owner of a vehicle plate if payment for a Parking Infraction Notice has not been received within five business days of the date of infraction or a request for trial has not been made.

### **Notice of Trial**

A Notice of Trial is the formal notification of a trial date.

### **Defendant**

For a parking infraction, the defendant is always the person or company name given to the Ministry of Transportation as being the registered owner of the vehicle plate.

### **Agent**

An agent is a person representing another person or company. This person may also be the

principal defence witness, the driver, and/or a person acting in an advisory capacity as a paralegal.

### **Witness**

A witness is a person with knowledge relating to the particulars of the infraction (i.e. the driver of the vehicle and occupants may be defence witnesses; the officer issuing the parking infraction is the principal witness of the prosecution). Only a statement made under oath can be considered as evidence. Both the defence and the prosecution have the right to question witnesses.

### **Court Clerk**

The clerk is responsible for ensuring all required documentation is before the court, announcing the opening of a session, and escorting the Justice of the Peace into the courtroom. The clerk is responsible for recording the proceedings of the trial, maintaining order in the court, and assisting the Justice of the Peace by ensuring all records are accurate and complete and performing other duties that may be required. The court clerk will also administer an oath to persons called to the stand and provide instructions to ensure a smooth flow in the process.

### **Prosecutor**

The prosecutor is the representative of the City of Timmins and will attempt to present evidence to prove that the infraction occurred.

### **Officer**

The Parking Enforcement Officer appearing in court is the officer who issued the parking ticket and is the prime witness for the prosecution. The Parking Enforcement Officer will give his or her testimony under oath. You have the right to ask this witness any questions you feel relevant for clarification or to bring out other evidence you feel necessary.

### **Justice of the Peace**

The Justice of the Peace is an independent arbitrator/judicial officer who presides over the trial, listens to and weighs the evidence given under oath to determine guilt or innocence. Should there be a finding of guilt and a conviction registered, the Justice of the Peace will then determine a fair and just penalty. The term used to address a Justice of the Peace is 'Your Worship'.