

UNIFORM LAW CONFERENCE OF CANADA

JOINT CIVIL/CRIMINAL SECTIONS

**Interim Report of the Working Group on
Interprovincial Service of Offence Notices**

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily reflect the views of the Conference and its Delegates. Please consult the resolution(s) on this topic as adopted by the Conference at the Annual meeting.

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[1] In August 2008 the following resolution was passed unanimously by the Criminal Section of the Uniform Law Conference of Canada (ULCC):

To ensure that provincial offence notices are properly served on accused persons in other jurisdictions, civil and criminal sections of the Uniform Law Conference of Canada should jointly examine the issue to develop a consistent statutory approach for consideration by all jurisdictions.

[2] The Working Group consists of two representatives from Quebec, one from Alberta and one from Yukon. Members have met a number of times by teleconference and have exchanged legislation and case law. We have discussed and explained existing practices in our jurisdictions, but have not yet had the opportunity to look at those jurisdictions not represented. Brief summaries of our practices are set out below. Yukon has no specific legislation respecting service outside the jurisdiction, but both Quebec and Alberta do, and more detailed summaries of the Quebec and Alberta legislation are appended. Also appended is a list of the case law and case law excerpts considered by the group to date. We are grateful to Rob Anderson of Alberta, who supplied much of that case law.

[3] The practice in Quebec is perhaps the most streamlined. All Quebec prosecutions are initiated by way of a Statement of Offence, which may be served in accordance with general rules for service of written proceedings or by specific rules governing only Statements of Offence. In either case, service may be effected outside Quebec by mail. Written proceedings are served by registered, certified or priority mail; Statements of Offence can also be served by ordinary mail which is deemed complete if the defendant responds by forwarding a plea, some or all of the fine, or an application.

[4] In either case, where service by mail is unsuccessful, a judge can authorize an alternate form of service. This alternate service is generally done by posting a notice

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with the Statement of Offence number and the name of the defendant in all the Court Registries of the province of Quebec for a period of thirty days.

[5] The same rules of service apply for offences recorded by way of photo radar devices in which case the Statement of Offence is directed to the registered owner of the motor vehicle who will escape liability only if he or she identifies the actual driver of the vehicle at the time of the offence.

[6] In Yukon and Alberta, provincial offences are commenced either by means of a long form Information or by means of a ticket. Long form Informations are reserved for more serious or complex matters such as significant motor vehicle, environmental or wildlife prosecutions.

[7] Alberta's governing legislation is the *Provincial Offences Procedure Act*.

[8] In the case of offences commenced by way of long form Informations, Alberta adopts the provisions of the *Criminal Code* relating to service under s. 509, and s. 703.2 in the case of an organization.

[9] For ticketable offences, service out of Alberta depends upon the nature of the offence and on the nature of the ticket issued.

[10] Summons violation tickets for offences having a maximum penalty of \$2,000.00 or six months' imprisonment, or both, must be served personally on the defendant or by leaving a copy at the defendant's residence with a person at least eighteen years of age.

[11] Offence Notice violation tickets for offences having a maximum penalty of \$1,000.00 with no possibility of imprisonment must be served personally on the defendant.

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[12] The exception to this requirement relates to Offence Notice violation tickets involving parking, photo radar, or red light camera offences which have set fine amounts endorsed. These may be served within or outside the jurisdiction by ordinary mail to the defendant's address as shown in the records of the defendant's home jurisdiction equivalent of the Alberta Registrar of Motor Vehicle Services.

[13] Yukon's governing legislation is the *Summary Convictions Act*, which provides for initiation of offences by means of long form Information or by ticket.

[14] Any ticket in Yukon may be served personally, by registered or certified mail or by leaving a copy at the last usual known place of residence of the person with any person who appears to be at least sixteen years of age. A certificate of service is endorsed on the back of the Court's copy of the ticket and the court will not accept the ticket where this is not filled in by the person who served it.

[15] Photo radar and red light camera devices are not in use in Yukon.

[16] There is no specific reference in the *Summary Convictions Act* to service outside the jurisdiction or to adoption of the provisions of the *Criminal Code* for service, although there is a general provision to the effect that the provisions of the *Criminal Code* in force from time to time relating to summary convictions apply with the necessary changes to proceedings in respect of territorial offences.

[17] Yukon's practice with respect to long form Informations has been to prosecute only where service of the Information has been completed within the jurisdiction, based on concerns respecting the validity of service outside.

[18] Where such a charge is laid, the offender is notified by mail of the existence of the charge and the fact that they will be served with process requiring them to attend court with respect to that charge should they be located within the jurisdiction.

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[19] Yukon's concerns respecting valid service outside may well be unfounded; Alberta believes that case law supports the validity of service outside the jurisdiction. Neither Alberta nor Quebec has experienced any legal challenges respecting such service. Amendments to Yukon's legislation would be required to specifically provide for extraterritorial service.

[20] Both Alberta and Quebec are of the opinion that service outside Canada is valid, so long as it is made in accordance with their legislation.

[21] From the three jurisdictions represented, there is no real uniformity in terms of extra jurisdictional service and we can anticipate even greater differences arising from examination of practices in other provinces and territories. There are, however, some common themes. The group seeks direction from the ULCC to pursue work on this issue by eliciting input from and encouraging participation by other jurisdictions in order to determine what common practices might form the basis for a consistent statutory approach.

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Appendix 1

Summary of Alberta Practice

Alberta's *Provincial Offences Procedure Act* (POPA) sets out the procedure to be used for all offences under any Act, regulation, order or bylaw over which the Legislature of Alberta has legislative authority. This is subject to any express provision in another Act (s. 2).

Rather than set out a complete code of procedure within the Act, POPA relies on the provisions in the *Criminal Code* relating to summary convictions. If, however, POPA or the regulations under POPA are inconsistent with the provisions of the *Criminal Code*, the provision of POPA and the regulations apply rather than the summary conviction provisions of the *Criminal Code* (s. 3).

POPA is divided into four parts: Part 1 deals with the general provisions; Parts 2 and 3 deal with violation tickets; and Part 4 deals with such matters as regulations, bylaws, and orders.

Proceedings for any offence to which POPA applies can be commenced by swearing an information, as per the procedure for summary conviction offences under the *Criminal Code*. If proceedings have been commenced by laying an information, the service provisions in the *Criminal Code* apply. (Section 509, which is applicable to summary conviction proceedings by virtue of s. 795 and s. 703.2.) Complex matters, such as serious environmental prosecutions, are almost always commenced by laying an information.

Parts 2 and 3 of POPA allow for a shortcut by using a violation ticket for offences that have been specified in the *Procedures Regulation*. In other words, this allows the peace officer to directly serve the defendant with a ticket rather than having to swear an information and serve another document, such as a summons, that requires the defendant

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to attend court. The violation ticket in effect acts as a combined information and summons.

Section 22 provides the ticket must identify the defendant with reasonable clarity, the offence with which the defendant is charged, the date on which and the place at or near which the offence is alleged to have occurred. Section 23.1 allows the Court to use electronic documents in carrying out its functions if permitted by the regulations.

Part 2 deals with summons violation tickets, which are mainly used for offences that are not motor vehicle related. The ticket sets out the offence and summons the defendant to appear in court. The summons indicates how the defendant may respond. The complainant has to swear the violation ticket before a Commissioner for Oaths and file a copy with the Clerk of the Court prior to the first appearance of the defendant (s. 25). The ticket contains three parts; the summons, which is served on the defendant, the court copy and the police copy. The summons violation ticket is served by delivering it personally to the defendant or, if the defendant cannot conveniently be found, by leaving it at the defendant's residence with a person who appears to be at least eighteen years of age. There are other methods of service for such entities as municipalities and corporations (s. 25). Subject to any express provision in another enactment, a person convicted of an offence commenced by way of a Part 2 ticket is liable to a fine of not more than \$2,000 or imprisonment for not more than 6 months, or both (s. 7).

Part 3 deals with offence notice violation tickets, which are mainly used for motor vehicle related offences. As in the case of a Part 2 ticket, a Part 3 ticket indicates how and when the defendant may respond to the offence notice, and a copy must be filed with the Clerk of the Court prior to the first appearance date. Unlike a Part 2 ticket, a Part 3 ticket need not be sworn. A Part 3 ticket can only be served on an individual by delivering it personally to the defendant (s. 31). There is one significant exception to this requirement for personal service, however. If the defendant has been charged under section 160 of the *Traffic Safety Act* (a charge against the owner of the vehicle) or

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charged with a parking violation, then the offence notice may be served by sending it by ordinary mail to the defendant's address as shown on the records of Alberta's Registrar of Motor Vehicle Services, or as shown in the records of an official of a jurisdiction other than Alberta who is a registrar of motor vehicles or performs a function for that jurisdiction similar to the function that the Registrar performs for Alberta (s. 31 (5)). This section is used for photo radar tickets, red light camera tickets and parking tickets where there is no one to personally serve at the scene. Vehicle owners in Alberta are legally required to keep their address with the Registrar of Motor Vehicle Services up to date and similar requirements exist in the other Canadian jurisdictions, so arguably there is no unfairness in serving defendants at the addresses contained in those records.

The Part 3 ticket must contain a notice to the defendant indicating that, if the defendant fails to respond to the ticket by the initial appearance date or does respond and fails to appear in court for trial, the defendant may be convicted in his or her absence. There is no need for the defendant to appear personally when he or she receives a Part 3 ticket. All Part 3 tickets have a specified penalty and give the defendant the option of making a voluntary payment. The defendant may either deliver an amount equal to the specified penalty and the applicable surcharge to a court office or to a registry agent of the court. If the defendant fails to respond to a Part 3 ticket by the initial appearance date, it is deemed to mean that the defendant does not wish to dispute the charge. A conviction is entered and the specified penalty for the offence is imposed on the defendant (s. 37). A similar provision applies if a trial date has been set and the defendant fails to appear in court for trial (s. 34). Once the conviction is made, the clerk causes notice of the conviction and the fine to be sent to the defendant by ordinary mail (ss. 34 and 37). If the defendant fails to pay the fine within the time allowed for payment, they are liable to pay a late payment charge equal to \$20 or 20% of the outstanding fine, whichever is greater (s. 41).

When a Part 3 ticket is used, the fine cannot exceed \$1,000.00 and the defendant is not liable to imprisonment (s. 40). Payment of Part 3 tickets can be enforced by civil recovery (s. 13) and by denying the defendant motor vehicle registry services (e.g.

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driver's licence and vehicle registration renewals) under the authority of s. 57 of the *Traffic Safety Act*.

Where a defendant has a reasonable excuse for failing to dispute or appear for trial on a Part 3 ticket, and not more than 15 days have elapsed since the conviction first came to the defendant's attention, he or she may appear before a justice and apply to have the conviction set aside. If the justice is satisfied by affidavit that the defendant's excuse is a reasonable one, the justice shall set aside the conviction and give the person a notice of trial. The justice may also take a guilty plea with representations as to the amount of fine to be paid (s. 38).

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Appendix 2

Summary of Quebec Practice

Service of Statements of Offence:

(*Code of Penal Procedure* (C.P.P.) (R.S.Q., c. C-25.1))

In Quebec, all penal proceedings are instituted by way of a statement of offence (article 144 C.P.P.). Service of the statement of offence marks the beginning of the penal proceeding (article 156 C.P.P.) and thus interrupts prescription (article 15 C.P.P.).

Service of a statement of offence can be done according to the general rules of service of written proceedings (articles 19 to 29 and 157 para. 2 C.P.P.) or according to the specific rules of service of statements of offence (articles 156 to 159 C.P.P.).

General Rules of Service of Written Proceedings

A statement of offence can be served by registered, certified or priority mail to the residence or business establishment of the person for whom it is intended. Service is deemed to be made on the date on which the notice of receipt is signed by the person for whom it is intended (or any other person under article 21 C.P.P.) or the date of delivery of the proceeding to the person for whom it is intended (article 20 C.P.P.).

Service by a peace officer or bailiff is made by delivery of the proceeding to the person for whom it is intended (article 21 C.P.P.) or at his or her residence by delivery of the proceeding to a reasonable person living there. Service on a legal person may be made at its head office, one of its places of business or the place of business of one of its agents by delivery of the proceeding to one of its officers or agents or another person in charge of the premises (article 21 C.P.P.).

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A written proceeding may be served outside Quebec by mail (registered, certified or priority) or in the manner prescribed by an agreement between the Government of Quebec and the government of another province or country (such an agreement does not currently exist).

A different method of service may also be authorized by a judge (article 24 C.P.P.) when service attempts have been unsuccessful. The special method of service most often requested in Quebec is service by public notice of the statement of offence number and name of the defendant for a period of thirty (30) days in all of the offices of the Court of Québec in the province of Quebec. Service is thus successful at the expiry of the 30-day period. Service by newspaper may also be granted under this article.

The motion for the special method of service may be filed with a judge of the judicial district where service is to be made (within the province of Quebec) or with a judge of the district in the place where the plea is being sent (articles 24 and 187 C.P.P., this place is Quebec City, district of Québec).

Specific Rules of Service of a Statement of Offence

Service of a statement of offence may be made at the time of the commission of the offence by the delivery of the duplicate of the statement to the defendant (article 157 C.P.P.).

Service of a statement of offence may also be made by ordinary mail (article 157.1 C.P.P.). Service is then deemed completed if the defendant transmits a plea, the whole amount requested or part thereof or a preliminary application.

In the case of a parking violation, service of the statement of offence may be made by affixing a duplicate in a conspicuous place on the vehicle (article 158 C.P.P.).

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Where an offence under the *Highway Safety Code* is imputable to an operator or owner of a heavy vehicle (within the meaning of the *Act respecting owners, operators and drivers of heavy vehicles* (R.S.Q., c. P-30.3)), the statement of offence may be served, at the time of the commission of the offence, by delivering a duplicate of the statement to any person having custody or control of the vehicle (article 158.1 C.P.P.).

The above-described service rules are also applicable to offences observed by means of photo radar equipment.

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Appendix 3

Case Law Reviewed

R. v. Eli [1920] A.J. No. 10 Alberta Supreme Court

R. v. Cooke [1943] O.A. No. 25 Ontario Supreme Court – High Court of Justice

Dupont v. Taronga Holdings Ltd. (1986) 49 DLR (4th) 35 Quebec Superior Court

Morguard Investments v. De Savoye [1990] 3 SCR 1077

Muscutt v. Courcelles (2002) 213 DLR (4th) 577 (Ont. C.A.)

Unifund Assurance Co. of Canada v. ICBC [2003] 2 SCR 63

Beals v. Saldanha [2003] S. C. J. No. 77 Supreme Court of Canada

R. v. R.J. Reynolds Tobacco Co. (Delaware) [2004] O.J.No. 548 Ontario Supreme Court of Justice

British Columbia v. Imperial Tobacco Canada Ltd. [2005] 2 SCR 473

Manitoba (Securities Commission) v. Bennett [2006] N.J. No.333 Manitoba Provincial Court

Costillo v. Costillo [2005] 3 SCR 870