

An Overview of the Provincial Offences Act

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After reading this chapter, you will understand

- when and how the *Provincial Offences Act* is used;
- the proper citation for the *Provincial Offences Act*;
- which legislation is covered by the *Provincial Offences Act*;
- the types of matters that are heard before the provincial offences court;
- how the *Provincial Offences Act* is administered;
- the difference between criminal and provincial offences;
- the breakdown of the *Provincial Offences Act* and regulations; and
- how the rules and regulations of the *Courts of Justice Act* apply to provincial offences.

Introduction

The *Provincial Offences Act*¹ (POA) is an Ontario statute that sets out the procedures for the administration and prosecution of charges laid under provincial statutes, municipal by-laws, and specific federal statutes. The POA is reproduced in Appendix A to this text.² The offences that follow the procedures of the POA are considered to be **regulatory offences**—meaning that laws have been enacted to regulate behaviour in society. For example, a stop sign regulates when drivers must bring vehicles to a halt. Committing a regulatory offence is typically considered to be a minor infraction or a social wrongdoing and is penalized accordingly. However, there are some more serious offences that have much harsher penalties, including substantial fines and the possibility of incarceration. For example, many of the offences in the *Liquor Licence Act*³ carry a fine of up to \$100,000 and the possibility of up to 12 months in jail for an individual who is charged, and a fine of up to \$250,000 for a corporation that is charged. POA offences are also sometimes called **public welfare offences** because they are associated with laws that have been established to protect the well-being of the general public. For example, the *Smoke-Free Ontario Act*⁴ was established in an effort to protect the public from the dangers of smoking.

An act under which a person is charged can be referred to as the **charging act**. The POA is seldom used to initiate charges and is considered to be more of a **procedural act** than a charging act. For example, a driver may be charged with speeding under the *Highway Traffic Act*⁵ (the charging act) but would follow the procedures for responding to the speeding charge as set out in the *Provincial Offences Act* (the procedural act). However, the POA does contain seven sections that create procedure-related offences:

- Section 42: failure to appear in court,
- Section 75: breach of a probation order,
- Section 77: being party to an offence,
- Section 78: counselling an offence,
- Section 86: making a false statement,
- Section 91: contempt of court, and
- Section 99: publishing the identity of a young person.

It is much more common for paralegals to defend clients charged under a range of other statutes and by-laws than to defend clients charged with one of the offences

regulatory offences
offences that are a violation of laws that were enacted to regulate behaviour in society (also known as provincial offences)

public welfare offences
offences that are a violation of safety laws that were enacted to protect the public (also known as provincial offences)

charging act
a piece of legislation under which a person is charged (e.g., the *Highway Traffic Act*)

procedural act
a statute that sets out the procedures to be followed when dealing with an offence (e.g., the *Provincial Offences Act*)

1 RSO 1990, c P.33.

2 The POA is provided for your ease of reference when completing class activities and assigned questions. When representing a client you should always refer to the most current version of the POA.

3 RSO 1990, c L.19.

4 SO 1994, c 10.

5 RSO 1990, c H.8.

created by the POA. However, one of these POA offences could arise when representing a client on another charge. For example, an extreme outburst or inappropriate conduct by your client during a traffic trial could lead to the justice finding the defendant to be in contempt of court.

Proper Statutory Citation

As a primary source of law, the *Provincial Offences Act* must be cited using the proper statutory citation. The proper citation for the POA is:

Provincial Offences Act, RSO 1990, c P.33

- *Provincial Offences Act* = name of the statute
- RSO = the name of the statute series in which the Act appears (Revised Statutes of Ontario)
- 1990 = the year in which the statute was last published in a revised volume
- c = the chapter in which the statute appears
- P.33 = the letter “P” makes reference to the first letter of the name of the Act—“*Provincial Offences Act*” (not the page, paragraph, or part) and the number 33 indicates that the POA was the 33rd statute beginning with the letter “P” in the 1990 edition of the Revised Statutes of Ontario

Statutes Governed by the Provincial Offences Act

The offences under all provincial statutes are administered and prosecuted using the procedures set out in the POA. Examples of commonly prosecuted provincial statutes include: the *Highway Traffic Act*, *Compulsory Automobile Insurance Act*,⁶ *Liquor Licence Act*, *Occupational Health and Safety Act*,⁷ and *Environmental Protection Act*.⁸

The *Municipal Act, 2001*,⁹ a provincial statute, creates the authority for municipalities (e.g., regions, cities, towns, townships) to enact by-laws that apply within their municipal boundaries. Infractions of these by-laws are also subject to the procedures set out in the POA.

A limited number of federal statutes are also governed by the procedures of the POA. Examples include: the *Canadian Environmental Protection Act*,¹⁰ *Canada Shipping Act, 2001*,¹¹ and *Fisheries Act*.¹²

6 RSO 1990, c C.25.

7 RSO 1990, c O.1.

8 RSO 1990, c E.19.

9 SO 2001, c 25.

10 SC 1999, c 33.

11 SC 2001, c 26.

12 RSC 1985, c F-14.

PRACTICE TIP

When preparing to represent your clients, it is important to consult the procedures set out in the charging act as well as in the *Provincial Offences Act* (the procedural act). The charging act may contain provisions that override the procedures of the POA. For example, although the POA specifies that the general limitation period for laying a Part III charge is six months, one of the provisions in the *Compulsory Automobile Insurance Act* (CAIA) overrides this limitation period. Specifically, under the CAIA, proceedings may be commenced at any time within three years after the date of the offence if a driver was found operating a motor vehicle without insurance. The POA provides standard procedural information that applies in most situations to the majority of offences. However, if the charging act contains procedural information specific to the offence, the charging act provisions should be followed. If the charging act does not contain the required procedural information, look to the POA for the necessary information.

Common Charges

Traffic violations are the most common charges in the provincial offences system. Statistics compiled by the Ontario Court of Justice indicate that, across all of Ontario, 81.6 percent of provincial offence matters are charges under the *Highway Traffic Act*.¹³ Of those traffic violations, the largest proportion is speeding. Other common traffic violations include: improper stop at stop sign, traffic light violations, distracted driving, failure to wear seat belt, and careless driving.

Parking offences can either be subject to the procedures set out in the POA or can follow a municipality's administrative penalty system (APS)¹⁴ by-law, if such a by-law has been enacted. For a discussion of administrative penalties, see Chapter 16. Examples of common parking infractions include: parking in a fire route, failing to display parking permits, and parking at an expired meter.

By-laws vary from municipality to municipality. Behaviours that are regulated in one municipality might not be regulated in a neighbouring municipality. However, some of the by-law charges common in most municipalities involve parking offences, noise violations, licensing matters, and building permit violations.

Most environmental infractions, whether covered by municipal, provincial, or federal legislation, follow the procedures as set out in the POA.

13 Ontario Courts, *Provincial Offences Court Activity (Part I and Part III only), Charges Received/Charges Disposed by Statute, Ontario Court of Justice Provincial Overview, January 2016 to December 2016*, online: <<http://www.ontariocourts.ca/ocj/files/stats/poa/2016/2016-Q4-POA-Statute.pdf>>.

14 Also known as administrative monetary penalty systems (AMPS).

PRACTICE TIP

Always review the actual wording of the charge(s) against each client. Reviewing the appropriate section(s) of the charging act will provide you with information you will need in preparing your defence and will help you to anticipate the prosecutor's case.

Comparison with Criminal Charges

Section 2 of the POA indicates that one of the purposes of the Act is to distinguish between provincial and criminal offences. In order to make such a distinction, when creating the POA it was necessary to establish procedures that were separate from the procedures used for criminal matters. The procedures that have been established for provincial offences are less restrictive and complex than criminal procedures, while still providing the opportunity for defendants to have their day in court.

Although provincial offences are sometimes called **quasi-criminal offences**, the offences are not considered to be criminal in nature. Provincial offences are often less serious than criminal offences, and a conviction does not result in a criminal record for the defendant. The offences are referred to as quasi-criminal because they do bear a resemblance to criminal matters (e.g., a defendant is charged for breaking a law) and because the procedure for dealing with some of the matters is similar to the criminal process (e.g., the defendant has the right to a trial and will be penalized if convicted).

Many people who consider themselves to be law-abiding citizens will find themselves in provincial offences court one day. For example, a driver could unintentionally make an improper turn while driving in an unfamiliar area. If a provincial offences officer witnesses this driving infraction, the driver may be charged. Theoretically, while the driver should be punished in some way for the wrongfulness of the act, he or she should not be punished to the same extent that criminal acts are punished. While there are some severe penalties under the POA, most are less severe than those under the *Criminal Code*,¹⁵ and the defendant will not receive a criminal record if convicted.

quasi-criminal offences

offences that bear a resemblance to criminal matters because the procedure for dealing with them is similar to the criminal process (also known as provincial offences)

Administration of the Provincial Offences Act

Over the past decade, the attorney general has transferred most of the responsibility for administering the POA to the municipal level. Municipalities now have the responsibility for prosecuting all Part I and Part II matters, while the province has retained responsibility for the prosecution of Part III matters. Municipalities are also responsible for administering all of the provincial offences courts and collecting all fines under the Act.

¹⁵ RSC 1985, c C-46.

PRACTICE TIP

When preparing to represent your clients, it will be important to consider the municipality that has jurisdiction over each matter. Different municipalities may have slightly different administrative procedures. For example, smaller municipalities may run their provincial offences courts only on specified days, while large municipalities have several courtrooms running at various locations every day. As well, different options may be available in different municipalities. For example, municipalities may have different forms and practices for obtaining disclosure requirements.

Breakdown of the Provincial Offences Act

The POA is divided into ten parts. Parts I, II, and III set out the procedures to commence proceedings for the different classifications of offences. Specifically, Part I deals with minor offences that are commenced using a Certificate of Offence, Part II focuses on the initiation of parking charges using a Certificate of Parking Infraction, and Part III involves commencing proceedings for more serious infractions by way of a document called an Information.

Parts IV through VIII contain general provisions that are applicable to Part I, Part II, and Part III hearings. Part IV deals with trials and sentencing in POA proceedings, while Part V provides miscellaneous additional information entitled “General Provisions,” such as information about electronic copies, authorizing interpreters, and contempt of court. Part VI contains the special rules that apply if the defendant is a young person between the ages of 12 and 16, Part VII discusses appeals and reviews, and Part VIII sets out the rules and procedures relating to arrest, bail, and search warrants.

Part IX and Part X each deal with a specific issue that relates to the application and administration of the POA. Part IX deals with situations where another statute has authorized taking a proceeding before the Ontario Court of Justice or a justice for an order. Part X is specific to the municipal transfer agreements that provide municipalities with the authority to provide court administration and court support functions under the POA.

As mentioned, the full text of the POA is reproduced in Appendix A.

Provincial Offences Act Regulations

regulations
legislation that contains the rules or principles that are enacted under the authority of a statute

Regulations are the principles or rules that are enacted under the authority of a statute. At present, nine regulations are in force under the authority of the *Provincial Offences Act*.

1. *Certified Evidence*¹⁶—Explains which evidence can be considered as certified evidence.

¹⁶ O Reg 132/14.

2. *Costs*¹⁷—Sets out, in chart format, the costs that may be applicable under sections 60(2) and 60(1).
3. *Electronic Documents and Remote Meetings*¹⁸—Defines and sets out procedures for the use of electronic documents.
4. *Extensions of Prescribed Times*¹⁹—Permits the courts to extend time periods in the event of a mail strike.
5. *Fee for Late Payment of Fines*²⁰—Establishes the administrative fee payable for fines in default.
6. *Forms*²¹—Provides information about provincial offences forms and sets out, in chart format, a table of forms.
7. *Parking Infractions*²²—Provides specific information and designated forms to be used for parking infractions.
8. *Proceedings Commenced by Certificate of Offence*²³—Prescribes format to be used for Certificates of Offence and other court forms, and provides the short-form wording that can be used on the Certificate of Offence.
9. *Victim Fine Surcharges*²⁴—Sets out, in chart format, the victim fine surcharges that are added to every offence.

PRACTICE TIP

It is important to learn the content of the regulations as well as the content of the Act because the regulations will provide more specific information about designated topics. For example, the POA does not provide specific information about additional costs that are payable on conviction, but Regulation 945 sets out the various costs that may be added to a fine when there is a conviction.

Courts of Justice Act

The *Courts of Justice Act* (CJA)²⁵ is an Ontario statute. Together with its associated regulations, the CJA sets out the rules used for Ontario courts. Because provincial offences are dealt with in the Ontario Court of Justice and the Superior Court of Justice, it is important to understand the rules that apply to both of these courts.

17 RRO 1990, Reg 945. Reproduced in Appendix B to this text.

18 O Reg 67/12.

19 RRO 1990, Reg 946.

20 O Reg 679/92.

21 O Reg 108/11.

22 RRO 1990, Reg 949.

23 RRO 1990, Reg 950.

24 O Reg 161/00.

25 RSO 1990, c C.43.

Two of the sections that apply to provincial offences matters are sections 38 and 39. These sections create the authority for the court and the justices. Specifically, section 38(2) of the CJA indicates that the Ontario Court of Justice has jurisdiction to perform any function assigned to it by or under the POA. Section 39 of the CJA grants power for a judge to preside in the Ontario Court of Justice and for a justice of the peace to preside in the Ontario Court of Justice in a proceeding under the POA.

In addition, the regulations to the CJA provide copies of some of the proper forms for provincial offences matters and set out the rules for proceedings and appeals. These regulations are listed below:

1. *Rules of the Ontario Court (Provincial Division) in Provincial Offences Proceedings*²⁶—Prescribes various procedural matters such as the calculation of time, filings, delivery of notices, certificates and other documents, and the prescribed forms to be used.
2. *Rules of the Court of Appeal in Appeals under the Provincial Offences Act*²⁷—Sets out the rules that govern appeals to the Court of Appeal.
3. *Rules of the Ontario Court (Provincial Division) in Appeals under Section 135 of the Provincial Offences Act*²⁸—Sets out the rules that govern appeals in a Part I or II matter.
4. *Rules of the Ontario Court (General Division) and the Ontario Court (Provincial Division) in Appeals under Section 116 of the Provincial Offences Act*²⁹—Sets out the rules govern appeals of Part III matters.

26 RRO 1990, Reg 200. Reproduced in Appendix B to this text.

27 O Reg 721/94.

28 O Reg 722/94.

29 O Reg 723/94.

KEY TERMS

charging act, 2
 procedural act, 2
 public welfare offences, 2
 quasi-criminal offences, 5
 regulations, 6
 regulatory offences, 2

REVIEW QUESTIONS

Multiple Choice

- Which of the following statutes sets out the procedures for pleading guilty to an insurance-related charge?
 - Highway Traffic Act.*
 - Insurance Protection Act.*
 - Provincial Offences Act.*
 - Compulsory Automobile Insurance Act.*
- Which of the following statutes is considered to be a procedural act?
 - Highway Traffic Act.*
 - Liquor Licence Act.*
 - Dog Owners' Liability Act.*
 - Provincial Offences Act.*
- Which of the follow statements is FALSE?
 - A conviction on a provincial offence will result in a criminal record for the defendant.
 - Provincial offences are sometimes called "quasi-criminal offences."
 - Provincial offences have a separate set of procedures from criminal procedures.
 - Most of the penalties for provincial offences are less severe than for criminal offences.
- In the statutory citation *Provincial Offences Act*, RSO 1990, c P.33, what does "P.33" refer to?
 - Page 33.
 - Paragraph 33.
 - Part 33.
 - The 33rd statute listed in the P volume of the RSO.
- What does Part VI of the *Provincial Offences Act* deal with?
 - Trials and sentencing.
 - Appeals and reviews.
 - Arrest, bail, and search warrants.
 - Special rules that apply if the defendant is a young person.
- Where would you look to find the proper procedures for appealing a traffic conviction?
 - Highway Traffic Act.*
 - Provincial Offences Act.*
 - Courts of Justice Act.*
 - The charging document.
- Where would you look to find the full text wording of the charging section for a stop sign offence?
 - Highway Traffic Act.*
 - Provincial Offences Act.*
 - Courts of Justice Act.*
 - The charging document.
- Which statute establishes the authority for a justice of the peace to preside over traffic matters?
 - Courts of Justice Act.*
 - Provincial Offences Act.*
 - Criminal Code.*
 - Highway Traffic Act.*
- What type of information does O Reg 67/12 contain?
 - Establishes the administrative fee payable for fines in default.
 - The short-form wording that can be used on the Certificate of Offence.
 - Defines and sets out the procedures for the use of electronic documents.
 - Sets out victim fine surcharges that are added to every offence.

10. Which of the following is an offence in the *Provincial Offences Act*?
- Improper stop at intersection.
 - Fail to surrender insurance.
 - Breach of a probation order.
 - Parking at an expired meter.
 - Stunt driving.
11. Which branch of government is responsible for collecting the fines under the *Provincial Offences Act*?
- Municipal government.
 - Provincial government.
 - Federal government.
 - Different branches of government for different parts of the POA.

Short Answer

- Would the *Provincial Offences Act*, RSO 1990, c P.33 apply to a person charged with speeding in British Columbia? Why or why not?
- Explain why provincial offences are sometimes referred to as “quasi-criminal” offences.
- Explain whether you would follow the provisions in the charging act or the procedural act (the POA) if they contain different procedural information.
- Section 61 of the POA states that the maximum fine for a Part III offence is \$5,000. However, the *Highway Traffic Act* indicates that the penalty for stunt driving, a Part III offence, can range from \$2,000 to \$10,000. Which maximum amount would apply and why?
- When preparing for trial, which types of legislation should a paralegal consult?