

March 31, 2016

VIA EMAIL: CSD.CivilFamilyPP@ontario.ca

Civil Enforcement Service Delivery Review
The Ministry of the Attorney General
Court Services Division, Civil and Family Policy and Programs Branch
720 Bay Street, 2nd Floor
Toronto, ON M7A 2S9

Dear Sir or Madam:

RE: Consultation on Proposed Alternatives to Civil Enforcement Services in Ontario

As you know, The Advocates' Society (the "Society") is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of the Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

The Society's Board of Directors has reviewed the consultation paper entitled "A New Approach to Providing Civil Enforcement Services in Ontario" with interest. The enforcement of orders made in the civil and family law context is an issue that the Society's members face on a frequent basis. The Society formed a Task Force to examine the issues related to the enforcement of civil orders more closely, and solicited feedback from the Society's broader membership on these issues. These submissions are the result of the Society's own research and feedback from members of the Society.

1) Experiences with the Existing Enforcement System

The Society makes the following comments with regard to the current system:

- The current system suffers from a lack of uniformity and intelligibility, which has led to frequent frustration with the time it takes to enforce a civil order with the assistance of a Sheriff. For example:
 - There is a lack of uniformity with regard to which orders are enforced by Sheriffs, both across the province and within individual regions, and this variability occurs even as among individual Sheriffs in the same region;

- Often, whether or not an order is enforced will depend on the type of asset to which the order relates (e.g. movable property and intangible assets such as shares); and
- The system used for the enforcement of guarantees and garnishments is onerous, as it requires the identification of not only the relevant bank, but also the relevant bank branch.

2) Potential Strategies for Improvement

Below, the Society reviews two different alternatives for potential improvements to the enforcement system. The Society does not recommend pursuing one alternative over the other; these submissions merely highlight considerations associated with the implementation of both of these alternatives.

a) Improvements to the Current Enforcement System

If the civil enforcement system were to remain public, the Society makes the following comments for the Ministry's consideration:

- A centralized provincial enforcement office would assist with the efficiency and consistency of the enforcement of civil orders, and would eliminate costs associated with parallel processes;
- The implementation of a province-wide registration system for writs similar to the system under the *Personal Property Securities Act*, which would include the parties' full legal names and dates of birth, would allow for a more efficient enforcement of these writs; such a system would be intended to complement the regional registration systems, which could continue to exist in parallel (for example, to allow a creditor to still register a debtor even if the debtor's date of birth is unknown to the creditor);
- The enforcement of writs relating to garnishment should be done on an institution-wide basis, and should not be dependent on the specific identification of a bank branch; and
- Improved training could enhance consistency between Sheriffs with regard to the enforcement of orders, and the timeliness of such enforcement.

b) Privatization of the Enforcement System

Potential Benefits

Alberta's civil enforcement system has been private for approximately 20 years. The Society has reviewed the Alberta experience to determine potential benefits and concerns with regard to privatization. In Alberta, private service providers (referred to as "civil enforcement agencies") are accountable to the Sheriff's office. Elements of the Alberta system which appear to speak to the benefits of privatization include:

- Increased efficiency in the provision of enforcement services;

- Control over entry into the system: training is provided by individual civil enforcement agencies and bailiffs must achieve a grade of at least 80% on a four-hour open book exam prepared by the Sheriff;
- Ongoing training: the Sheriff regularly circulates memos to update civil enforcement agencies on changes to civil enforcement processes and the law;
- Compliance: civil enforcement agencies and civil enforcement agencies are subject to audits on a regular basis;
- Resolution of complaints: the Alberta experience reflects that there are few complaints made to the Sheriff's office with regard to the efficiency and execution of enforcement services by civil enforcement agencies (and their bailiffs), and that frequently complaints are resolved between the complainant and the civil enforcement agency prior to a complaint being filed with the Sheriff.

Concerns

The use of private service providers would increase costs to the user. The Alberta experience reflects that the implementation of a system using civil enforcement agencies saw a significant increase in user costs over the prior public system. An increase in costs through a privatized system was also a key concern raised by members of the Society who were canvassed on their potential concerns with privatization of the enforcement system. A move to a user-pay system could inevitably raise access to justice issues.

Additional concerns raised by the Society's membership were:

- private service providers will have less incentive to be impartial in the execution of their duties – while Sheriffs owe a duty to the Court, private service providers would operate on a for-profit basis and would be accountable to the creditor;
- existing regulatory protections may be undermined; and
- government control and accountability may be reduced with a private system.

c) A note on Delegated Administrative Authorities

It is difficult to conceive of how a Delegated Administrative Authority ("DAA") could be charged with the management of private service providers, given that established DAAs are not involved in this type of management. However, the Society believes that there could be a role for a DAA with regard to setting appropriate standards and issuing licenses for private service providers.

The Society also notes that the *Delegated Administrative Authorities Act, 2012*, S.O. 2012, c. 8, Sched. 11, which has not yet been proclaimed, would provide additional safeguards in the public interest and provide for greater accountability by DAAs (e.g. requirements for the

surrender of documents to the Information and Privacy Commissioner and others upon request, and requirements for quantitative metrics to measure success and failure).

Thank you for providing The Advocates' Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours very truly,



Martha McCarthy
President

Task Force Members:

Tom Curry (Chair; *Lenczner Slaght Royce Smith Griffin LLP*, Toronto)

Hilary Book (*WeirFoulds LLP*, Toronto)

Rosemary Fisher (*Simpson Wigle LAW LLP*, Burlington)

Shaun Hohman(*Rose LLP*, Calgary)

Emily Kirkpatrick (*Hunter Litigation Chambers*, Vancouver)

Jonathan Lancaster (*Fasken Martineau DuMoulin LLP*, Toronto)

Penelope Ng (*Epstein Cole LLP*, Toronto)

Allison Speigel (*Speigel Nichols Fox LLP*, Mississauga)

Nicole Tellier (Barrister & Solicitor, Toronto)

Jason Wadden (*Goodmans LLP*, Toronto)

Dave Mollica (Director of Policy and Practice, *The Advocates' Society*, Toronto)