

ADMINISTRATIVE FAIRNESS

ADMINISTRATIVE MONETARY PENALTIES

This guide is meant to assist government bodies that use administrative monetary penalties (AMPs) to do so in a way that is administratively fair. It was compiled in collaboration with the Compliance & Enforcement Secretariat because of the Secretariat's subject matter expertise in compliance and enforcement, and the Office of the Ombudsperson's knowledge of administrative fairness.

What is an Administrative Monetary Penalty?

Administrative Monetary Penalties (AMPs) are integral tools that government bodies can use to enforce legislation. They act as deterrents to individuals and corporations who are not following specific aspects of laws or regulations.

There are multiple types of fines that are issued for a contravention or non-compliance. Variation in the use of AMPs is understandable and necessary because of the different AMPs available to different offices or groups working under distinct legislation or regulations. With all AMPs issued, the principles of administrative fairness apply.

Administrative Fairness and AMPs

What is administrative fairness? It is the expectation that public bodies provide services to the public fairly. This includes following a fair decision-making process, making a fair decision to issue an AMP, and demonstrating fair service towards those who are impacted.

The following are ways to ensure administrative fairness when dealing with individuals or groups impacted by AMPs:

- Avoid the use of jargon and use understandable and accessible language (*e.g., instead of 'pursuant' use 'under'; instead of 'conducted' use 'held'; rather than 'imposition' use 'issue'*).
- Clarify the point of the letter/conversation (*e.g., This is to inform you that an administrative monetary penalty may be/is assessed*).
- Give details about what happened and what the contravention is.
- Provide information about the role of the ministry/branch/department, or where that information can be found.
 - It is also helpful to explain who the decision-maker is and the scope of their authority as well as where it can be found in the rules/policy/law.
- Give reasonable notice of the decision and follow all statutory notice requirements, if applicable.
- Clearly explain the timelines and any consequences for failing to respond by the due date for submissions.

- Explain the evidence and information being considered before making the decision.
- Provide an opportunity to be heard or confirm when the opportunity was provided. Providing individuals who are impacted by a decision with an opportunity to be heard is a fundamental aspect of administrative fairness. The opportunity to be heard should include:
 - Access to the information and evidence that the decision maker will rely on so that the person can provide a response (notice).
 - A list of factors the decision-maker is required to consider, either by law or policy, before imposing an AMP.
 - An opportunity to respond to the information and evidence and provide any additional information.
- Explain how the rules/policy/law were applied to the facts and used to provide the basis for the decision (e.g., “*The AA Act section BB, states...*”).
- Clearly state the decision (e.g., *The decision has been made to issue an administrative monetary penalty*).
- Explain why issuing an AMP advances the purposes of the underlying regulatory framework.
- Decision-makers who exercise discretion when determining the amount of the AMP must balance consistency in decision-making and the obligation to consider the circumstances of each situation, and the different circumstances and personal characteristics of individuals, independently.
- Explain any mitigating or aggravating factors that were considered when determining the amount of the AMP. In some cases legislation or policy sets out what factors a decision-maker must review before imposing a penalty. Ensure that these factors have been contemplated and communicated in your decision-making process.
- Provide additional necessary information, such as how to pay the penalty, the date the penalty is due, and additional consequences of the AMP or consequences if the AMP is not paid.
- Explain appeal or review options including associated timelines, starting with internal processes, then appropriate external oversight bodies such as the Office of the Ombudsperson.
- Be available to answer questions or provide more clarification.

Fairness with AMPs is important because:

- Procedural fairness means that individuals who are impacted by decisions have the right to an impartial decision maker and the right to be heard. For more on this, see [The Essentials of Procedural Fairness](#) fact sheet.
- When an individual receives adequate and meaningful reasons for decisions that are made, it helps them to accept a decision, even if they may not agree with it. [The Reason for Reasons](#) fact sheet explains this in more detail.
- Public sector decision makers must exercise their discretion fairly. See the corresponding [Using Discretion Fairly](#) fact sheet on this topic.

NOTICE OF NON-COMPLIANCE

This letter is an example of information that can be provided when writing to individuals/groups about a possible AMP.

Wording in brackets [] below indicates the details that should be included in this type of letter.

Highlighted text indicates the wording that should be altered to each specific situation.

Date

Organization/Person

ATTN:

Address

Anytown BC X0X X0X

Dear XX,

Re: Notice of Non-compliance

This letter is to inform you that an administrative monetary penalty may be assessed against you under the legislation/regulation/etc.

[WHAT HAPPENED] Date and details

[ROLE OF MINISTRY/BRANCH/DEPARTMENT] The XX's role is to enforce/inspect/licence/etc. *[Or reference publicly available materials (e.g., website)].*

[EVIDENCE CONSIDERED] This preliminary decision is because...inspection/report/etc. *(Include information on how the individual/group may access this evidence in order to assess it and reply to it.)*

[RULES THAT APPLY] Legislation/regulation/etc. XX states...

[NOTICE REQUIREMENTS] *(Explain the notice requirements, per regulation, etc., of the penalty notice.)*

[OPPORTUNITY TO BE HEARD] This is your opportunity to provide the decision maker with additional information/evidence you believe is necessary for them to make a decision. Please provide additional information/evidence to XX by XX date; if you do not respond by this date, the decision maker will make a decision based on the evidence available.

If you have any questions about this possible administrative monetary penalty, please contact XX at XXX.

Sincerely,

ADMINISTRATIVE FAIRNESS

DETERMINATION OF ADMINISTRATIVE MONETARY PENALTY

This letter is an example of information that can be included when writing to individuals/groups about an AMP that is issued to them.

Wording in brackets [] below indicates details that should be included in this type of letter. Highlighted text indicates the wording that should be altered to each specific situation.

Date

Organization/Person

ATTN:

Address

Anytown BC X0X X0X

Dear XX,

Re: Determination of Administrative Monetary Penalty

This letter is to inform you that there is an assessment/decision/etc. of an administrative penalty/contravention under legislation/regulation/etc.

[WHAT HAPPENED (DESCRIPTION of the contravention)] On XX date, a hearing took place/On XX date, an inspector observed/etc.

[ROLE OF MINISTRY/BRANCH/DEPARTMENT] The XX's role is to enforce/inspect/licence/etc. *[Or reference publicly available materials (e.g., website)].*

[EVIDENCE CONSIDERED] I have considered/the decision maker considered the XX document/conversation/observations/etc...

[RULES THAT APPLY] The legislation/regulation states that/our policy on administrative monetary penalties can be found here. I have reviewed/the decision maker reviewed the information in conjunction with the RULES XX (Act/Regulation/etc.) which state...

[RESPONDENT'S (NAME'S) RESPONSE] You were provided with an opportunity to provide information/evidence at hearing/inspection/etc. via email/in-person/letter on XX date.

[DETERMINATION] The decision has been made to issue you an administrative monetary penalty.

[HOW TO PAY] You/Organization must pay the monetary penalty of XX amount by XX date. You can pay this by cash/cheque/etc. mailed to XX.

[POSSIBLE CONSEQUENCES] If payment is not received within XX days...

ADMINISTRATIVE MONETARY PENALTIES

[APPEAL/REVIEW OPTIONS] You may appeal this decision to the *(insert name of review or appeal body)* if you disagree with the decision. You must commence your appeal or file for review within XX days of this letter. For more information about the appeal or review process, please visit *(insert name of review or appeal body)*'s website or contact *(insert individual/telephone/email)*.

If you believe that the process followed by the decision maker was unfair, unreasonable, or inconsistent with the relevant policy, procedures, or legislation, you may wish to raise your concerns with the Office of the Ombudsperson (bcombudsperson.ca).

If you have any questions about this administrative monetary penalty, please contact XX at XXX.

Sincerely,

For additional useful resources on administrative fairness, please see our [website](#).

FREE. INDEPENDENT. CONFIDENTIAL. FAIR.

Contact us at consult@bcombudsperson.ca | 1-800-567-3247

bcombudsperson.ca |   