



## STAFF REPORT ACTION REQUIRED

### Write-Off Policy for Fines under the *Provincial Offences Act* Deemed Uncollectible

<b>Date:</b>	October 31, 2008
<b>To:</b>	Government Management Committee
<b>From:</b>	Acting Treasurer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2008\Internal Services\Rev\gm08026rev (AFS#8601)

#### SUMMARY

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This report recommends a policy establishing protocols and thresholds under which *Provincial Offences Act* (POA) accounts receivable, including parking fines, shall be deemed uncollectible and therefore eligible for write-off consistent with the write-off directive and operating guideline published by the Ministry of the Attorney General.

#### RECOMMENDATIONS

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**The Acting Treasurer recommends that:**

1. Parking related fines, fees, costs and penalties imposed under Part II of the *Provincial Offences Act* and/or City by-law(s) that have been outstanding for at least two years, may be written off as uncollectible consistent with Chapter 71 “Financial Control” Article VIII of the Toronto Municipal Code, once the Treasurer is satisfied that all reasonable steps to collect the amount owing have been undertaken, and if:
  - a) The person convicted and who owes the unpaid amount(s) is deceased and collection from an estate is impractical or has been unsuccessful; or
  - b) For unpaid fines totalling less than \$1,000, the person convicted and who owes the unpaid amount(s) has reached the age of 90 and no longer possesses a valid driver’s license; or
  - c) The operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the City Solicitor’s office has

confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing; or

- d) The operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical.
2. Fines, fees, costs and penalties imposed under Parts I and III of the *Provincial Offences Act* and/or City by-law(s) that have been outstanding for at least two years, may be written off as uncollectible consistent with Chapter 71 “Financial Control” Article VIII of the Toronto Municipal Code, once the Treasurer is satisfied that all reasonable steps to collect the amount owing have been undertaken, and if:
- a) The person convicted and who owes the unpaid amount(s) is deceased and collection from an estate is impractical or has been unsuccessful; or
  - b) For unpaid fines totalling less than \$1,000, the person convicted and who owes the unpaid amount(s) has reached the age of 90 and no longer possesses a valid driver’s license; or
  - c) For fines more than fifteen (15) years old, the person convicted and who owes the unpaid amount(s) no longer resides in the Province of Ontario and the fine(s) is for an offence for which there is no mechanism for inter-provincial enforcement; or
  - d) The operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the City Solicitor’s office has confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing to the City; or
  - e) The operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical; or
  - f) The limitation period to pursue civil enforcement action has expired and other collection mechanisms have been, or are likely to be, unsuccessful as determined by the City Solicitor; or

- g) For violations over 15 years old where supporting documentation providing proof of the conviction and/or payment to satisfy the amount owed cannot be located, a sworn affidavit is filed with the City by the defendant attesting to the fact they have in fact previously paid for the fine(s) and that they do not have in their possession the required documentation to prove such a claim; or
  - h) The individual or corporation convicted and who owes the unpaid amount(s) cannot be located.
3. The Treasurer, or his/her designate, be authorized to annually provide the Ministry of the Attorney General with information regarding the total value of all fines deemed uncollectible and written off during the previous municipal fiscal year as part of the Annual Performance and Progress Report to be submitted to the Ministry no later than June 30<sup>th</sup> of each year.

### **Financial Impact**

While precise financial impacts cannot be determined at this time, staff do not anticipate any significant financial impact associated with the adoption of the recommendations contained in this report.

With respect to Part I and III offences, which fall under the Court Services Division, revenues are recorded on a cash basis as payments are received. As such, there is no financial impact associated with the recommended write-off policy for fines charged under Parts I and III of the *Provincial Offences Act*.

With respect to parking tickets (i.e. offences under Part II of the *Provincial Offences Act*), the City maintains a provision for parking tickets that remain unpaid and staff estimate of what may not be collected. Staff anticipate that the provision is sufficient to cover the cost of parking tickets that may be written off under the policy and criteria being recommended in this report. As part of the year-end review process, staff from Revenue Services and Accounting Services will continue to annually assess the appropriateness of the City's provision for unpaid parking ticket offences.

The Acting Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **DECISION HISTORY**

At its meeting held on September 26 and 27, 2007, City Council, in considering a report (August 27, 2007) from the Treasurer titled "Use of Collection Agencies to Collect Parking Fines" (re: Government Management Committee Report Meeting No. 7, Item GM7.2) adopted a recommendation requesting that "The Directors of Revenue Services and Court Services, through the Treasurer, report to Government Management Committee recommending a policy establishing protocols and thresholds under which *Provincial Offences Act* accounts receivable, including parking fines, shall be deemed uncollectible and therefore eligible for write-off consistent with the write-off directive and operating guideline published by the Ministry of the Attorney General." The report

and Council decision can be accessed at:

<http://www.toronto.ca/legdocs/mmis/2007/cc/decissions/2007-09-26-cc12-dd.pdf>

## ISSUE BACKGROUND

The *Provincial Offences Act* (POA) sets out the procedures for administering and prosecuting:

- a) all provincial offences that exist within provincial legislation (e.g. *Highway Traffic Act*, the *Compulsory Automobile Insurance Act*, the *Trespass to Property Act*, *Liquor Licence Act*);
- b) minor federal offences designated as contraventions such as offences issued under the *Canada Marine Act*; and
- c) municipal by-laws.

The *Provincial Offences Act* is divided into three (3) parts:

- Part I of the Act governs minor offences, such as moving violations, with a maximum fine of \$500;
- Part II of the Act deals exclusively with parking infractions;
- Part III of the Act covers more serious offences, with higher fines in excess of \$500 (e.g. driving while licence suspended, driving without valid automobile insurance, charges under Occupational Health & Safety legislation).

Enforcement agencies (including Toronto Police Services, Ontario Provincial Police, and City of Toronto by-law enforcement officers) issue in excess of 3.5 million charges each year for offences governed by the *Provincial Offences Act*, with the majority of the charges filed being related to parking infractions (i.e. Part II of the POA). Table 1, below, summarizes the average number of charges laid each year under the *Provincial Offences Act*.

Table 1  
Average Number of Charges Laid Annually under the *Provincial Offences Act*

Provincial Offences Act	Average No. Of Charges Laid each Year	% of Total Charges Laid
Part I	630,000	18 %
Part II	2,880,000	81 %
Part III	51,000	1 %
Total	3,561,000	100%

City staff make every effort to pursue the collection of unpaid POA fines in accordance with legislative requirements and Council policies/directives. Collection activities include the issuance of various notices as prescribed under the *Provincial Offences Act*, the use of collection agencies in accordance with Council approved policies, and where

legislatively allowable, the plate denial process. With respect to parking tickets (i.e. Part II of the POA), the City collects payment on approximately 80 percent of all tickets issued each year, representing annual revenues of approximately \$80 million. A very effective tool for collecting unpaid parking tickets is the plate denial process, whereby persons with outstanding parking fines are prevented from renewing or purchasing new licence plates until their outstanding parking fines are paid. The plate denial process is also available for red light camera charges governed under Part I of the POA, however it is not available for any other charges under Part I or III of the POA.

With respect to Part I and III offences, the City collects payment on approximately 70 percent of all charges laid where a conviction is entered, representing annual revenues of approximately \$45 million. Fine levels under Part I and III offences are significantly higher than parking fine levels with some fines over \$5,000. As such, the payment rate for Part I and III offences is lower than parking fines. Individuals either do not have the means to pay or are unwilling to pay despite having sanctions applied, including the suspension of their driver's licence and referral of accounts to collection agencies.

## **COMMENTS**

Although staff make every effort to collect unpaid fines, there are circumstances where unpaid fines are unlikely to be collected for various reasons.

Until recently, municipalities had no authority to write off uncollected fines under the POA. In late February 2008 the Ministry of the Attorney General issued directives and guidelines (attached as Appendix A of this report) outlining the mandatory requirements that municipalities are expected to meet in order to write-off POA accounts receivable that have been deemed uncollectible once all reasonable efforts to collect unpaid, defaulted fines have been exhausted. Some of the key mandatory requirements under the guidelines require:

- a) the municipality to adopt a formal write-off policy establishing protocols and thresholds under which POA accounts receivable shall be deemed to be uncollectible and therefore eligible for write off;
- b) that, with the exception of unpaid amounts less than \$25, POA accounts receivable marked for write-off must have been in default for a minimum of two (2) years;
- c) the reasons for the write-off must be transparent and justifiable;
- d) municipalities exhaust all reasonable and appropriate measures and efforts to collect unpaid, defaulted fines prior to the consideration of a write-off;
- e) the documentation in support of a write-off recommendation must, at a minimum include the following:
  - Copy of original Certificate of Offence or Part III information;

- Record of additional costs and fees included in the outstanding amount;
  - Documentation as to all collection activities undertaken; and,
  - Reason the write-off is recommended.
- f) Municipalities, on an annual basis, provide the POA Unit of the Ministry of the Attorney General with information regarding the total value of all fines deemed uncollectible and written-off during the previous municipal fiscal year (i.e., January 1<sup>st</sup> to December 31<sup>st</sup>) as part of the Annual Performance and Progress Report to be submitted no later than June 30<sup>th</sup> of each year.

In keeping with the requirements contained in the Write-Off Directive and Operating Guideline issued by the Ministry of the Attorney General, and consistent with Council's Financial Control By-law (re: Chapter 71, Article VIII, of the Toronto Municipal Code) , staff are recommending that fines, fees, costs and penalties administered under the *Provincial Offences Act* and/or City by-laws that have been outstanding for at least two (2) years, be written off as uncollectible once the Treasurer is satisfied that all reasonable and appropriate measures to collect the amount owing have been undertaken, and if:

1) for parking related offences:

- a) The person convicted and who owes the unpaid amount(s) is deceased and collection from an estate is impractical or has been unsuccessful; or
- b) For unpaid fines totalling less than \$1,000, the person convicted and who owes the unpaid amount(s) has reached the age of 90 and no longer possesses a valid driver's license; or
- c) The operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the City Solicitor's office has confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing; or
- d) The operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical.

2) for offences under Parts I and III of the *Provincial Offences Act*:

- a) The person convicted and who owes the unpaid amount(s) is deceased and collection from an estate is impractical or has been unsuccessful; or
- b) For unpaid fines totalling less than \$1,000, the person convicted and who owes the unpaid amount(s) has reached the age of 90 and no longer possesses a valid driver's license; or

- c) For fines more than fifteen (15) years old, the person convicted and who owes the unpaid amount(s) no longer resides in the Province of Ontario and the fine(s) is for an offence for which there is no mechanism for inter-provincial enforcement; or
- d) The operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the City Solicitor's office has confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing to the City; or
- e) The operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical; or
- f) The limitation period to pursue civil enforcement action has expired and other collection mechanisms have been, or are likely to be, unsuccessful as determined by the City Solicitor; or
- g) For violations over 15 years old where supporting documentation providing proof of the conviction and/or payment to satisfy the amount owed cannot be located, a sworn affidavit is filed with the City by the defendant attesting to the fact they have in fact previously paid for the fine(s) and that they do not have in their possession the required documentation to prove such a claim; or
- h) The individual or corporation convicted and who owes the unpaid amount(s) cannot be located.

The write-off criteria proposed above reflect situations where all reasonable and appropriate collection efforts have been exhausted prior to considering an amount for write-off.

## **CONTACTS**

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Barry Randell, Director, Court Services, 416-392-3835

## **SIGNATURE**

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Giuliana Carbone  
Acting Treasurer

Appendix A: Write-Off Directive and Operating Guideline - Published by the Ministry  
of the Attorney General

**Appendix A**  
**Provincial Offences Act**  
**Write-Off Directive and Operating Guideline**

Provincial Offences Act Unit  
POA and Strategic Planning Branch  
Court Services Division  
Ministry of the Attorney General  
February 25, 2008

**PROVINCIAL OFFENCES ACT**  
**WRITE-OFF DIRECTIVE AND OPERATING GUIDELINE**

**PURPOSE:**

1. To ensure that Municipal Partners administering the *Provincial Offences Act* (POA) courts can demonstrate that they have exercised due diligence with respect to the write-off of POA accounts receivable and made all reasonable efforts to minimize the value of POA accounts receivable recommended for write-off.
2. To provide guidance with respect to best practices regarding the write-off of POA accounts receivable that have been deemed uncollectible.

**SCOPE AND APPLICATION:**

1. This Directive and Operating Guideline applies to all Municipal Partners that are subject to a POA Transfer Agreement and the related Memorandum of Understanding (MOU) with the Attorney General.
2. This document has been developed to provide Municipal Partners with guidance as to the minimum requirements they are expected to meet in order to write-off POA accounts receivable. While the decision to write-off POA accounts receivable that have been deemed uncollectible is a local decision to be made by a Municipal Partner once all reasonable efforts to collect unpaid, defaulted fines have been exhausted, a Municipal Partner must follow the directives contained herein in order to ensure that the Province of Ontario, its Ministries and Agencies will not attempt to collect any portion of the written off funds from the Municipal Partner, including funds related to dedicated fines, fees or surcharges, subject to clause 4 below.
3. The Recommended Best Practices contained in this document have been developed to provide Municipal Partners with guidance with respect to best



practices regarding the write-off of POA accounts receivable that have been deemed uncollectible.

4. Where a Municipal Partner has written off POA accounts receivable and any portion of those accounts receivable are subsequently paid, the requirements of the POA Transfer Agreements and the *Provincial Offences Act*, including requirements with respect to the remittance of certain funds to the Province of Ontario upon collection, continue to apply.

#### **PRINCIPLES:**

1. All reasonable effort to collect fines imposed under the POA must be made before any consideration for write-off is made. For purposes of this policy, “write-off” means the cessation of active collection.
2. In accordance with the requirements of the MOU, an equal effort to collect unpaid fines, regardless as to whether they are retained by the municipality or paid to a third party, must be demonstrated.
3. POA accounts receivable may be written off for accounting purposes only and do not absolve a convicted offender from the requirement to pay a fine, as debts to the Crown are owed in perpetuity and are never forgiven.
4. Collection activities of written-off accounts can be resumed when conditions change, as fines imposed by POA Courts are debts owed to the Crown and therefore are not subject to the *Limitations Act*.
5. Municipalities must retain adequate records after an account is written-off in order to support the possible future reinstatement of collection efforts.

#### **MANDATORY REQUIREMENTS:**

##### **General**

1. Each Municipal Partner shall create a formal Write-off Policy establishing protocols and thresholds under which POA accounts receivable shall be deemed to be uncollectible and therefore eligible for write-off.
2. Equal treatment and effort regarding the collection of all POA fines must be applied, without regard to whether the resulting revenue will be retained by the Municipal Partner or remitted to another third party.
3. With the exception of minor underpayments (i.e., less than \$25 outstanding), POA accounts receivable marked for write-off must have been in default for a minimum of 2 years.
4. Action to collect accounts receivable outstanding less than 2 years from individuals for whom a death certificate has been received may be undertaken

should the Municipal Partner's Collections Policy and Protocol specifically require recoveries from Estates.

5. Where a Municipal Partner decides to write-off POA accounts receivable, the reasons for the write-off must be transparent and justifiable and must not place the administration of justice into disrepute.
6. Each Municipal Partner must have exhausted all reasonable and appropriate measures and efforts to collect unpaid, defaulted fines prior to the consideration of recommending a write-off.
7. The documentation in support of a Write-off recommendation must, at a minimum, include the following:
  - Copy of original Certificate of Offence or Part III information;
  - Record of additional costs and fees included in the outstanding amount;
  - Documentation as to all collection activities undertaken; and
  - Reason the write-off is recommended

### **Ongoing Administration**

1. Where a Municipal Partner has written off POA accounts receivable and any portion of those accounts receivable are subsequently paid, the Municipal Partner must remit to Ontario, in a timely manner, all monies received in respect of fines, surcharges and fees that are payable to Ontario pursuant to subsection 165(5) of the *Provincial Offences Act*.
2. Where a Municipal Partner has written off POA accounts receivable and the related case(s) have been purged from ICON and any portion of those accounts receivable are subsequently paid, the case(s) related to the payment received must be re-entered into ICON (see related ICON instructions in Appendix A) and the payment must be recorded as revenue, with supporting documents, and distributed in accordance with the MOU.
3. Where, under the terms of the POA Transfer Agreement, a Municipal Partner proposes the contracting out of any services related to the performance of its obligations under the POA Transfer Agreement, the Municipal Partner must ensure that the contract provides that the person or organization performing the contract will meet the mandatory requirements and have due regard for the recommended best practices contained within this directive and operating guideline.
4. On an annual basis, each Municipal Partner must provide the POA Unit of the Ministry of the Attorney General with information regarding the total value of all

finances deemed uncollectible and written-off during the previous municipal fiscal year (i.e., January 1<sup>st</sup> to December 31<sup>st</sup>) as part of the Annual Performance & Progress Report to be submitted no later than June 30<sup>th</sup> of each year.

### **RECOMMENDED BEST PRACTICES:**

1. The Municipal Partner should have its written policy and protocol for the collection of unpaid, defaulted POA fines and criteria for write-off of uncollectible amounts approved by Council or by the Council committee responsible for the administration of the POA courts via a municipal By-Law.
2. Examples of reasonable and appropriate measures and efforts to collect unpaid fines prior to the consideration of recommending a write-off include the following collection activities, applied progressively. While the actual measures and efforts to be employed by a Municipal Partner should be documented in its Write-off Policy, the following steps provide guidance as to what is reasonable and appropriate:
  - Timely creation and distribution of all notices and communications;
  - Progressively severe delinquency notices, including letters via registered mail;
  - Consideration of extended payment plan;
  - Application of available administrative sanctions;
  - Specialized collection assistance; and
  - Civil fine enforcement mechanisms.
3. Accounts receivable should be reviewed semi-annually to identify potential write-offs and annually to identify accounts deemed uncollectible and to be recommended for write-off.

### **RESPONSIBILITIES:**

#### **Municipal Partners:**

- Setting thresholds and formalization of own write-off policy based on the principals and requirements of this document;
- Specifying the format and reporting detail for write-offs recommendation submissions; and
- Final approval to cease active collection and write-off a fine.

**Court Managers:**

- Coding and processing in ICON;
- Document collection efforts made prior to the recommendation of a write-off; and;
- Monitor outstanding accounts receivable on a semi-annual basis for potential write-offs.

**Ministry of the Attorney General:**

- Provision of continued access to ICON or its successor;
- Timely and regular scheduling of ICON purges; and
- Assistance to municipalities in dealing with other Provincial Ministries

**ADDITIONAL INFORMATION:**

If you have any questions or require further information regarding this document, please contact Pam Elliott, Provincial Offences Act Unit, at (416) 326-2590 or [Pamela.Elliott@ontario.ca](mailto:Pamela.Elliott@ontario.ca).

**Process for Re-Entering Cases into ICON**

1. Access the IACVH (conversion) screen with the case number.
2. The IIOFE (entry) screen will appear, allowing for entry of the case information. Please note that ICON will only allow dates prior to December 31, 1994 to be entered into the court date field. It is suggested that, in order to identify these cases, all cases being re-entered after write-off and subsequent payment should be keyed with a common court date (e.g., 010194). Once you hit the enter key, the ISCDs (update) screen will automatically appear.
3. Update the case information on the ISCDs (update) screen with the disposition information, including entering the same date in the conviction date field as was entered in the court date field on the previous IIOFE (entry) screen (e.g., 010194 as noted above). Update the fine and cost information and hit the enter key. The case has now been re-entered into ICON and payment can be processed through the IFCR (cash) screen. The payment information related to the case should appear on the daily RICO reports. Please note that access to the IACVH (conversion) screen is limited to Court Manager's.