

AUDITOR GENERAL'S REPORT

Toronto Court Services: Collection of Provincial Offence Default Fines

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EXECUTIVE SUMMARY

Ongoing series of audits of various City revenue streams

This audit examines the Court Services Division's framework for collecting Provincial Offences Act (POA) fines that are in default, with the exception of parking violations which are collected by the Revenue Services Division.

Provincial offences are charges laid under many different provincial statutes and regulations (including the Highway Traffic Act) as well as municipal bylaws. The POA governs how those offences are prosecuted and enforced, including how fines are collected.

Responsibility for collecting outstanding and future POA fines in Toronto was transferred to the City in 2002.

Why this audit matters

\$577 million¹ is in default for over two million offences where fines remain unpaid. 74 per cent of these fines have been outstanding for more than five years. A fine is collected as part of the administration of justice process. The collection of these fines impact City revenues.

A major portion of money owing to the City is paid in a timely manner

The review of POA fine revenues is part of the Auditor General's ongoing series of audits of the processes and controls over various City revenue streams. A key element of many of these audits is the assessment of controls over billing and collections.

There are still large amounts which are not being collected

Across this series of audits, we have observed that a major portion of money owing to the City is paid in a timely manner. We have also noticed that large amounts of receivables are not being collected, and in some of our other audits, overdue receivables are not being recorded. A summary of key findings from these audits is included in Table 4 of section D of this report.

Given that the City is faced with constant pressure to find funding for crucial programs and services, it is important that those who owe debts to the City pay them.

¹ The \$577 million in default is comprised of \$421 million owing to the City, \$63 million to be collected by the City on behalf of the Province, and \$93 million for collection agency costs added by Court Services in order to pay for potential collection agency commissions.

The Importance of Collecting Fines and Enforcing Payment under the Provincial Offences Act

As noted by Alok Mukherjee², President of the Ontario Association of Police Services Boards in 2011:

*"Every unpaid fine undermines the justice system, frustrates our law enforcement officers, and denies local governments much-needed revenue in challenging economic times."*³

Enforcing payment is integral to the fair administration of justice

A report by Court Services to City Council in 2005 states [emphasis added]:

"the key element of ensuring that justice is served is that sentences are made good and that court ordered fines are paid in full ... It is the City of Toronto's responsibility to make every reasonable effort to collect court ordered fines to ensure that justice is well served."

(<https://www.toronto.ca/legdocs/2005/agendas/council/cc050201/admcl001b.pdf>)

67% of fines are collected

A major portion of fines are paid in a timely manner. As shown in Figure 1, 67 per cent (\$651 million⁴) of the approximately \$972 million⁵ in post-transfer POA fines have been collected up to June 30, 2017. In the majority of these cases, offenders voluntarily pay their fines. This portion of fines was not the focus of the audit.

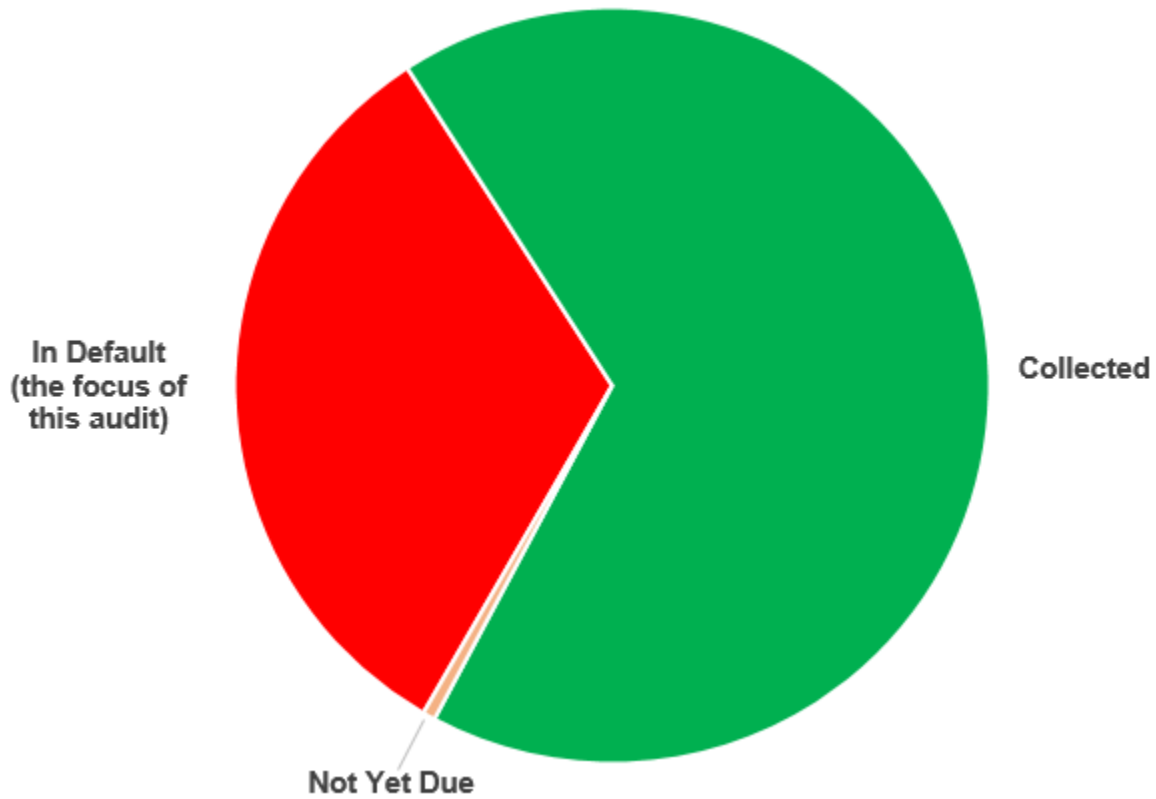
² Source: <https://www.newswire.ca/news-releases/a-billion-dollar-problem--oapbs-releases-white-paper-on-unpaid-fines-509020601.html>.

³ Fred Kaustinen, Executive Director of the Ontario Association of Police Services Boards advised this view holds true today

⁴ Excludes amounts collected to pay collection agency commissions

⁵ Excludes amounts collected to pay collection agency commissions

Figure 1: Post-transfer Fines, to June 30, 2017



Source: Data provided by Court Services

Total amount in default has grown to \$577 million as at June 30, 2017

This audit focused on the over two million cases with unpaid fines that have gone into default.

As of June 30, 2017, there is \$484 million in defaulted fines – \$421 million owing to the City and \$63 million to be collected by the City on behalf of the Province – this is more than 2.4 times the balance transferred to the City in 2002.

An additional \$93 million for collection agency costs is also currently considered to be in default, added by Court Services in order to pay for potential collection agency commissions⁶. In all, \$577 million is shown in the province's Integrated Courts Offences Network (ICON) system as being in default. Court Services is responsible for collecting on these defaulted accounts.

⁶ Collection agency costs (CAC) in ICON are added by Court Services. The amount that will actually be applied upon collection of the defaulted fine may vary from time to time

Figure 2: Growth of Defaulted Fines Since Transfer from the Province

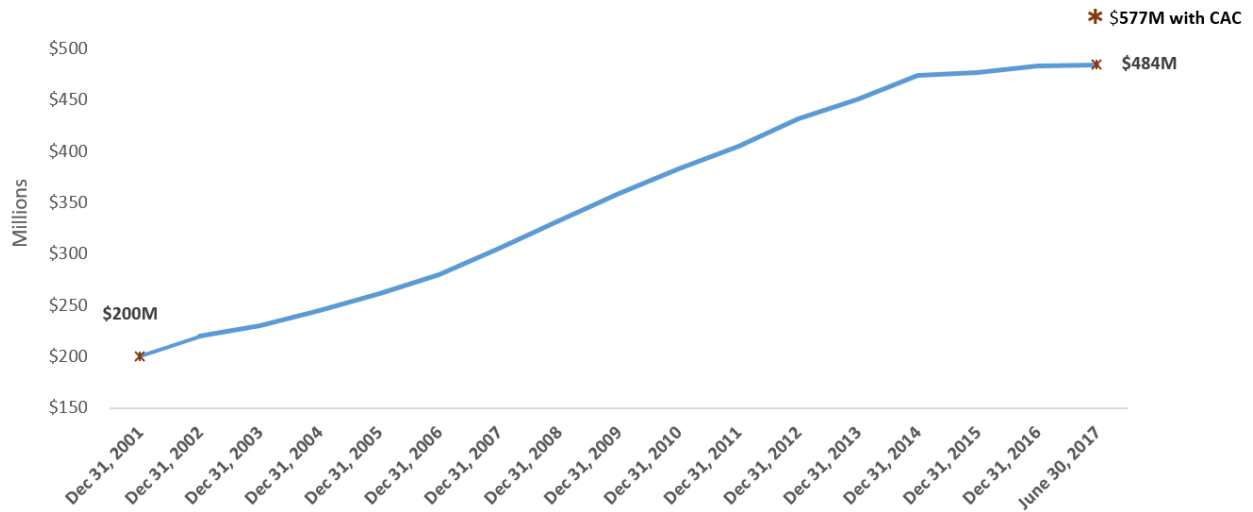
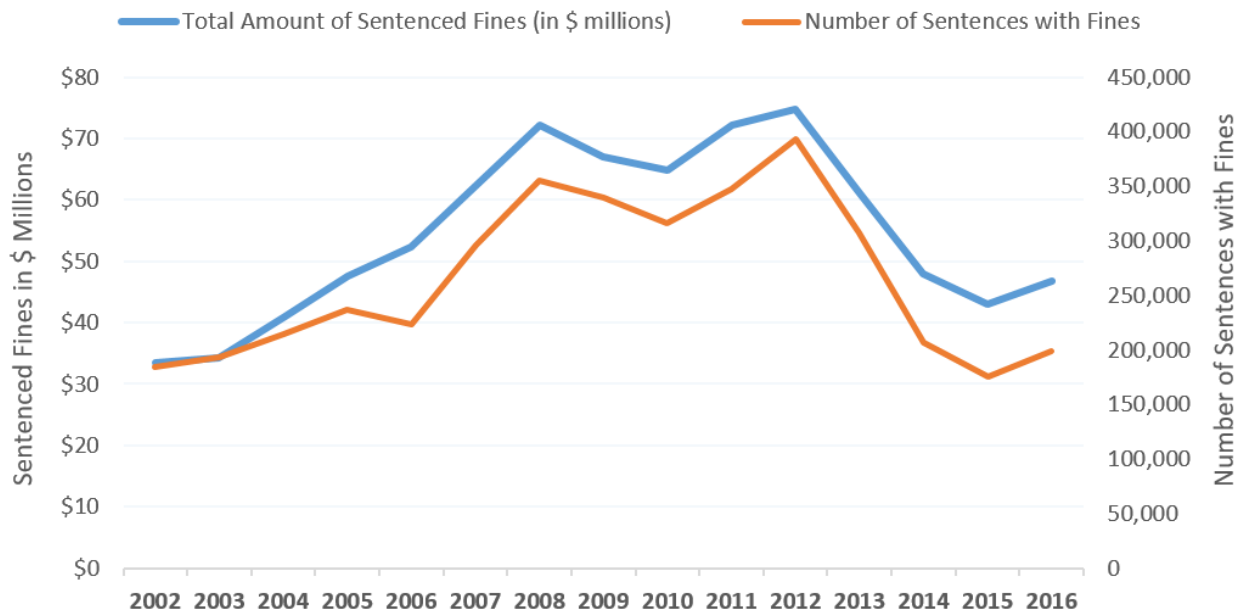


Figure 3: Number of Sentences and Amount of Sentences by Year



**Court Services
collection activities**

Court Services advised that its collection efforts focus on four areas:

- Reviewing defaulted fines eligible for plate denial and licence suspension that are then transmitted to the Ministry of Transportation (MTO) to action
- Collecting defaulted fines through in-person front-line service, web payment portal, and over the phone through collections officers
- Managing the performance of contracted collection agencies and a third-party dialer service
- Civil enforcement measures through the provincial Superior Court of Justice.

**Collection of defaulted
POA fines is a complex
area**

The collection of defaulted POA fines is a complex area. Court Services, together with other municipal court administrators, have successfully advocated for changes to legislation and improved collection tools. However, the Division appears to be lagging behind the collection industry on the technological front and in applying best practices for collection of delinquent accounts.

Results of the Audit

Audit Findings

This report discusses systemic challenges facing the Court Services Division in managing defaulted POA fines in a methodical, consistent, and timely manner. It examines the effective use of current and potential enforcement tools available to the City. It suggests adopting a strategic plan for collection against which performance can be assessed and reported. Finally, it discusses the importance of transformation for collection of overdue accounts receivable by centralizing collection efforts. This will allow the City to achieve efficiencies and improve the effectiveness of collection efforts City-wide.

In this report, we identify three key actions Court Services can take to improve collections of defaulted POA fines:

1. Apply a methodical, consistent, and timely approach to collecting defaulted Provincial Offence fines based on the profile of the debt.
2. Effectively leverage available tools and continue to seek out new tools to encourage payment of delinquent accounts.
3. Modernize the use of data and technology to support effective collections.

1. Apply a Methodical, Consistent, and Timely Approach for Collecting Defaulted Fines

Enhancing collection strategies based on the debt profile can improve collection results

The best collection approaches will vary based on the amount and age of the debt, the type of offence, and the collection tools available based on the type of offence. Court Services can enhance its collection strategies to improve collection results. For example, the Division does not appear to have a robust strategy to deal with accounts that are known to be challenging to collect, such as high-balance accounts, companies, and repeat offenders. At the time of our audit, at least \$27 million in defaulted fines related to high-dollar accounts were not re-assigned to a collection agency for action. In some cases, no collection action was being taken.

Defaulted fines are largely being pursued through collection agencies

A number of tools exist to support collection efforts; however, Court Services relies heavily on the actions of seven private collection agencies. These agencies have altogether recovered approximately \$18.5 million of the nearly \$300 million in defaulted accounts assigned to them over the nearly three years of their contracts to date. It is our view that the rate of collection is potentially impacted by delays in the collection agencies receiving accounts from the City.

This issue was identified in a 2007 report from the City's Internal Audit Division and continues to exist today. Court Services needs to improve the speed at which it assigns cases to collection agencies in order to have a better chance at collecting debts.

Taking prompt action is vital in collecting debts

The Auditor General of Ontario's 1997 report on the Ministry of the Attorney General - Courts Administration Program (which included POA fines prior to the transfer of authority for collections to municipal partners) clearly stated:

"The longer an account is outstanding, the more difficult it is to collect. Accordingly, delays in collection are resulting in significant loss of revenue to the province."

Other areas for improvement include adopting a more active re-assignment strategy, implementing performance targets for collection agencies, and motivating agencies by basing account assignments and renewal options on results. At the same time, agencies must continue to abide by codes of conduct and the City's goodwill approach to collections that is specified in its service agreements.

2. Effectively Leverage Collection Tools

A number of tools exist to support collection efforts. Over time, the available tools have improved as a result of advocacy by the City's Court Services and Legal Services staff, as well as other municipal court administrators.

Opportunities exist to improve licence suspension as a tool to encourage payment

- To support collection efforts, driver's licences are suspended shortly after a driving-related fine goes into default. Approximately, 77,000 debtors with \$212 million in default currently have their licences suspended; over 70 per cent have been suspended for five or more years. Our challenge was that, with the information we had, we could not confirm that *all* licences that were thought to have been suspended were, in fact, suspended. Suspension information being used by Court Services does not appear to be consistent with MTO's ARIS system.

In addition, we identified cases where it appears that driver's licences should have been suspended but were not because of system and/or process deficiencies. There are approximately 47,000 cases with \$10 million in defaulted fines that should be further reviewed by Court Services. Where eligible, these cases should be sent to the MTO for licence suspension.

Legislative changes may improve enforcement of defaulted fines owing by companies with HTA offences

- Nearly 60 per cent of defaulted fines relate to the Highway Traffic Act or Compulsory Automobile Insurance Act; yet, more than one third of these fines are not subject to licence suspension (and in turn multi-plate denial) or single-plate denial. Plate denial does not always apply if the debtor is not the registered owner of the vehicle in which the offence was committed. It also does not apply to companies cited for commercial motor vehicle-based offences.

As at June 30, 2017, companies owed nearly \$4 million in defaulted fines for Highway Traffic Act and Compulsory Automobile Insurance Act offences. Legislative changes, such as improving the ability to use plate denial without first having to suspend a driver's licence, may be helpful for enforcing payment by delinquent companies who have defaulted fines for commercial motor vehicle related offences.

Court Services needs to prioritize and file Certificates of Default in a timely manner

- Certificates of Default (CODs) provide the legal status necessary for the City to pursue civil enforcement for defaulted fines, such as garnishment or property seizure and sale. Since 2014, Court Services has issued 3,500 CODs. Many were filed where the debtor did not own property or did not have known employment information. Court Services can better prioritize the filing of CODs.

In addition, after our audit identified that Legal Services' requests for CODs were not being fulfilled in a timely manner, Court Services filed a portion of the requested CODs. At the end of April 2018, Court Services filed 72 CODs in Superior Court for approximately \$11.8 million in defaulted fines. It is important for Court Services to file CODs promptly when requested by Legal Services, because property ownership can change quickly.

There are additional opportunities to include delinquent accounts on property tax rolls or secure writs

- Where a debtor is the sole owner of property, defaulted fines can be added to their property tax roll. From June 2010 to December 2017, the City added approximately \$4.9 million in fines to property tax rolls. While this measure resulted in high collection rates, we observed that not all cases eligible to be added to tax rolls were identified by Court Services for Legal Services to review.

The audit identified approximately 8,380 unique debtors, (42,350 cases, \$9 million), that may potentially own property. Some cases may be eligible to be added to the tax roll. Others are properties against which CODs / writs can be secured. These cases are now being reviewed and actioned by Legal Services.

Court Services needs to improve its processes to identify more accounts that can be added to the property tax roll. Improved property data matching is also valuable for identifying cases to prioritize for CODs. Prompt identification is important because interest can be charged where fines are added to the tax roll or where CODs have been filed. Legislative changes would greatly expand the ability to use this tool for properties where a debtor jointly owns property.

The City should pursue additional channels of collection

The City's suite of collection tools is constantly evolving, and legislative amendments or partnerships may open up new channels for collection. A new opportunity for the City is to follow other jurisdictions who have used the Canada Revenue Agency's set-off programs to enable income tax refunds to be applied against outstanding fines. The set-off programs may be particularly helpful for defaulted fines that are hard to collect and where the debtor no longer reside within Toronto's jurisdiction.

Other channels for collection that should be explored include: requiring payment of outstanding fines as a condition of business licences; providing incentives for prompt payment such as early payment discounts and charging of interest; and ensuring ongoing contact with debtors through methodical dunning.

3. Modernize the Use of Data and Technology to Enable Effective Collections Management

Quality of debtor information is key to successful collection

Keys to successful collection include ensuring the quality of the information recorded about the debtor and keeping records current, such as address and contact information.

The Province's ICON system is inadequate for City collection purposes

The provincial ICON system that Court Services relies on was designed nearly 30 years ago as a tracking system to manage information about Ontario court cases. ICON does not support efficient and effective collection of the City's over two million accounts in default. Reports produced from the system are insufficient for effective oversight of the collection function, and the debtor information in the system is not kept current.

Court Services does not have a robust system to record updated debtor information

The City's Internal Audit Division recommended that Court Services consider procuring or developing a system to track and manage the collection of outstanding POA fines more than 10 years ago. Court Services still does not have a separate system in place to do this. Without such a system, the Division is at a disadvantage because it does not have a robust system to record and track updated debtor information for the two million cases in default.

Improved information sharing is needed to support collection efforts

System limitations notwithstanding, updated information on delinquent accounts may be available to Court Services from its collection agencies, other City Divisions and governmental bodies, as well as other third parties. Such information could be used to corroborate debtor information in ICON, locate an individual or business, or obtain other data that can be critical to the effective use of collection tools.

Technology has advanced significantly and should be leveraged to support debt collection

Technology has evolved over the 15 years since Court Services assumed responsibility for POA default fine collection. Collection management systems exist in the marketplace with a range of capabilities to support both debt collection and the advanced use of predictive data analytics.

Establish a Strategic Plan for Collections Against Which Performance Can be Assessed and Reported

Court Services should develop a strategic plan that sets out a cost-effective, multi-streamed, multi-channeled collection approach that takes into account the debt profile, collection tools available, and collectibility of the fine, with appropriate strategies for each stream. The plan should include specific objectives and performance targets to improve collections and reduce delinquency – in support of a strategic goal to limit the number and value of defaulted POA fines.

Current reporting on performance is very limited

We found that information included in performance reporting to the Ontario Ministry of the Attorney General and City Council is very limited. In order to make informed decisions regarding fine collection challenges, expectations, and obstacles, the City Manager and City Council should be provided with sufficient and timely information about accounts in default. Establishing and benchmarking outcome-based performance measures will foster greater accountability for the collection of defaulted fines.

Transformation of City-wide Collection of Overdue Accounts

The issues identified in this report are not new

Many key themes identified in this audit are similar to the issues identified in previous audits of revenues, receivables and/or collection processes across the City, including audits of Revenue Services (Water Billing, Property Tax Billing, Parking Tags) and Real Estate Services.

Receivables and collection management issues have been noted in multiple audits in a number of areas across the City

The majority of observations from these audits can be summarized into three broad themes:

1. **Lack of a comprehensive collections strategy**, including the inconsistent or ineffective use of available collection tools
2. **Inadequate data systems** or data tracking to support the collection strategy
3. **Insufficient performance targets and/or reporting** to allow management to monitor and refine the collection strategy

There is a clear need for transformation of the City's approach to collecting the money it is owed

The fact that these issues have been noted in multiple audits over a long period of time and in a number of divisions, signals a clear need for transformation of the City's approach to collecting the money it is owed. Solutions for these kinds of challenges are typically large-scale, long-term and involve some form of business transformation.

Over \$1 billion in receivables are managed across multiple divisions

The City's accounting records show a total balance of over \$1 billion in outstanding receivables. Management and collection of this amount is decentralized over multiple divisions across the City. These divisions have separate contracts with private collection agencies and there may be duplication of efforts in trying to collect their receivables from the same debtor.

The Auditor General recommended centralization in 2012

The 2012 Auditor General's report, "Review of the Management of the City's Divisional Accounts Receivable", recommended that the City Manager evaluate the centralization of collection activities as part of the ongoing shared service review. This recommendation is still outstanding. The results of this audit, as well as service efficiency studies conducted across the City, reinforce the need for a dedicated revenue collections unit for delinquent accounts.

Technological improvements and the leveraging of predictive data analytics continues to grow at a rapid pace in the collections industry. The City does not appear to be keeping pace. Our view is that leveraging economies of scale, centralizing oversight and tapping into industry expertise to assist with solving collections issues will improve the City's collection of overdue accounts in a cost-effective manner. Several other Canadian and U.S. jurisdictions have already successfully moved towards greater consolidation of collection activities.

Input from industry experts should be sought in designing the best solution to address the City's problem

Transformation in this area represents a significant undertaking, and there are different models as to how centralization can occur. Considering the complexity of the matter, the breadth of the issues and the amount of industry expertise needed, our view is that the City should consider using a Joint Solution (JS) procurement approach to design and choose the best solution for the City.

A Joint Solution Request for Proposal (JS-RFP) is a multi-stage, collaborative process where the City would share its collection difficulties and then, as part of the procurement process, leverage private sector expertise to design a range of solutions.

The size of the City's outstanding receivables when consolidated brings economies of scale that will attract the expertise of proponents who will invest in providing a city-wide delinquent collections solution. It may even be possible for the solution to benefit other jurisdictions.

Conclusion

Having a significant amount of fines in default is not just a financial issue for the City. Ensuring collection of defaulted fines provides the public with assurance that laws are effective and fines are a meaningful deterrent when laws are broken.

This audit makes 31 recommendations to strengthen Court Services' strategy, oversight, and tools to collect defaulted POA fines. We will continue to perform additional data analytics on defaulted fines to determine if there are additional opportunities to improve collection. Should any significant observations arise, we will apprise management and City Council, as appropriate.

Equally important, the City has an opportunity to transform its management and collection of debts by centralizing oversight and leveraging industry expertise to assist the City in collecting its debts in a cost-effective manner.

We express our appreciation for the co-operation and assistance we received from management and staff of the Court Services, Legal Services, Municipal Licensing and Standards, and Accounting Services divisions, as well as all other divisions that provided information for our audit.

We also express our appreciation for the co-operation and assistance we received from management and staff from other jurisdictions including the Regional Municipality of York, City of Barrie, City of Ottawa, Ontario Ministries of the Attorney General, Transportation, and Finance, the Province of British Columbia, and the Canada Revenue Agency.

BACKGROUND

The City's Court Services Division and the Provincial Offences Act

Provincial Offences Act (POA) offences covers a wide range of statutes

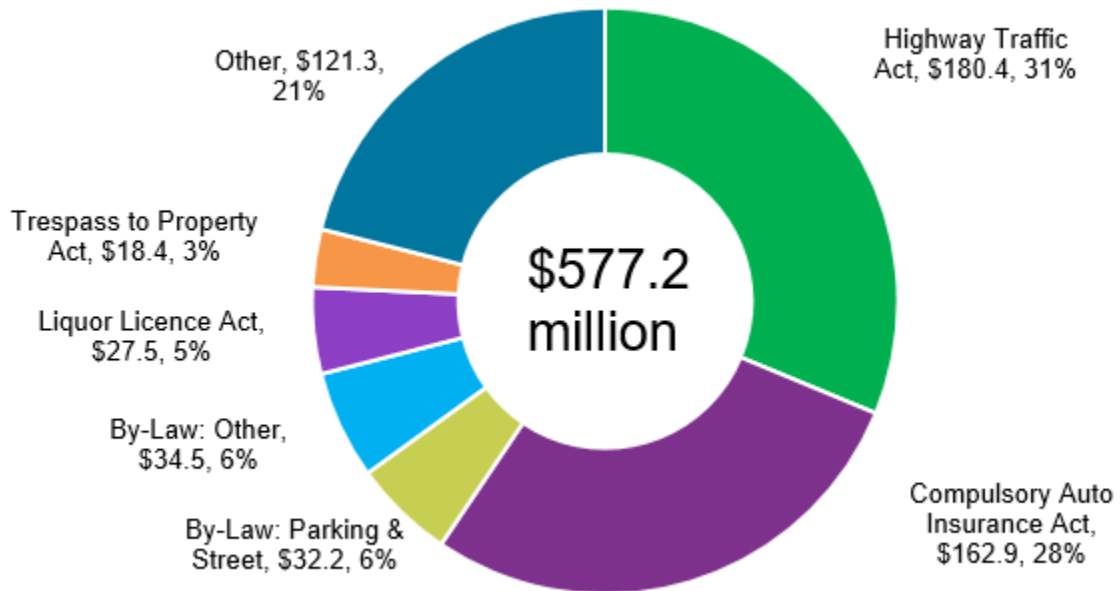
The Provincial Offences Act (POA) in Ontario came into effect in the 1970s and laid out the process for prosecuting offences under provincial statutes, regulations and municipal bylaws. Offences are charged under a wide range of statutes, such as:

- Highway Traffic Act (e.g., speeding, careless driving, running a red light)
- Compulsory Automobile Insurance Act (e.g., driving without valid insurance)
- Liquor Licence Act (e.g., selling without a liquor licence, selling to minors, public intoxication)
- Occupational Health and Safety Act (e.g., failure to provide a safe workplace environment)
- Fire Protection and Prevention Act (e.g., failure to meet fire safety standards)

Some offences can have serious impacts on individual and community safety.

Figure 4 summarizes defaulted POA fines by statute. Many offences are punishable by a fine, but may result in other sentences including jail time.

Figure 4: POA Fines in Default (in Millions), by Statute



Responsibility for POA administration was transferred to the City in 2002

In 2002, responsibility under the POA for conducting most prosecutions, collecting fines and enforcing payment within the city, was transferred from the Ontario Ministry of the Attorney General (MAG) to the City of Toronto. Similar transfer agreements were made with municipalities across the province.

Administration of POA-related matters at the City is managed by the Court Services Division (except for the collection of payment for parking tickets, which is managed by the Revenue Services Division). There was approximately \$200 million⁷ outstanding at the time of transfer. The Division has since collected approximately \$44 million⁸ related to the pre-transfer fines.

67% of fines sentences since the time of transfer have been collected

A major portion of fines are paid in a timely manner. According to Court Services, over the 15 years since the transfer (up to June 30, 2017), around 67 per cent (\$651 million⁹) of the approximately \$972 million¹⁰ in post-transfer POA fines have been collected. Court Services was unable to provide us with a breakdown between payments received by the due date and payments made on fines that have gone into default. Only those fines that have gone into default are the focus of this audit.

\$577 million in default as of June 30, 2017 is the focus of this audit

This audit focuses on how the City manages the two million cases where fines owing, or portions thereof, remain in default. Court Services provided data from the Province's Integrated Courts Offences Network (ICON) indicates that, as of June 30 2017, there is \$577 million in default that the Division is responsible for collecting.

⁷ In reports considered by City Council in 2002 and 2005, Court Services reported that there was \$184 million in default at the time of transfer from the Province. Reports from ICON indicate that, as of December 2002, approximately \$200 million was in default for sentences preceding the transfer.

⁸ Excludes amounts collected to pay collection agency commissions

⁹ Excludes amounts collected to pay collection agency commissions

¹⁰ Excludes amounts collected to pay collection agency commissions

Breakdown of \$577 million owing:	Amount
Fine amount payable to the City	\$373 million
Court costs and administration and late fees payable to the City	\$48 million
Victim Fine Surcharge (VFS) to fund victim assistance programs, which is collected by the City on the Province's behalf	\$63 million
Collection Agency Cost (CAC) charged to the debtor, which is received by the City then disbursed to collection agencies to pay their commissions ¹¹	\$93 million

While the ICON system indicates \$577 million is in default, Court Services advised the amount of defaulted fines is less

Obtaining accurate information has been a challenge during this audit. Much of the statistical financial information in this report on number of cases (offences), fine sentences, defaulted fines, and collections, as well as the related dollar amounts, originated from the ICON system. In certain cases, we were unable to validate statistics provided by Court Services to reports generated from ICON.

Management advised that the \$577 million in default, includes several types of debt where collection is unlikely or impractical. This includes extremely old fines, fines related to deceased persons or bankrupt organizations, and those where the debtor cannot be identified from the information available on ICON. These amount to approximately \$155 million that Court Services has stopped actively pursuing.

In addition, management advised that \$577 million is not the actual amount in default because ICON includes, for example:

- cases where there is no fine amount owing – just an administration charge
- some cases under appeal, where the fine would no longer be considered in default
- some cases that have been given additional time to pay and would no longer be considered in default while payments are being made.

Court Services estimates there may be an additional \$18 million included in ICON where extensions have been granted or where cases are in transit for appeals.

¹¹ Collection agency costs (CAC) in ICON are added by Court Services. The amount that will actually be applied upon collection of the defaulted fine may vary from time to time.

Only \$51.2 million and \$41.7 million were recorded as POA fines receivable in the City's financial statements as of December 31, 2016 and 2017 respectively¹². We intend to review the accounting treatment of POA fines receivable in the City's financial statements. If any matters need to be brought to City Council's attention, we will report on them at the appropriate time.

The Importance of Default Fine Collection Management

The growing amount of unpaid and aging fines is a well-known problem

The growing amount of unpaid and aging fines is a well-known problem.

For example, in 2011, the Ontario Association of Police Services Boards published a White Paper entitled "Provincial Offences Act – Unpaid Fines: A \$Billion Problem". The White Paper, in its entirety, can be found at: <https://oapsb.ca/wp-content/uploads/OAPSB-POA-WHITE-PAPER-FINAL-1-Nov-2011.pdf>

The magnitude of defaulted fines undermines public safety, the rule of law, and accountability

The White Paper noted:

"The enormous magnitude of this delinquency undermines public safety, the rule of law and accountability. It clearly also has a significant financial impact on municipalities."

¹² This is an accounting estimate of the amount of defaulted fines, court cost, administration and late fees owing to the City, *together with* amounts owing for fine sentences that have yet to go into default (as at December 31, 2016 and 2017) that the City expects to collect in the future. Given the uncertainty of the revenue associated with POA fines, and in recognition that the growing amount of unpaid and aging fines is a well-known problem, many jurisdictions have chosen not to record receivables for fines on their financial statements.

Reasons for the growth in unpaid fines across the province

The White Paper also identified several reasons for the growth in unpaid fines across the province, including:

- Collection is often seen as being about money rather than justice and is not given the attention or resources necessary to be fully effective
- Reliance on fines rather than other penalties (e.g., imprisonment) increased, the number of fines issued increased, and fines simply cost more¹³
- The number of cases in the court system, and the time it takes to resolve cases makes it more likely that some fines will become uncollectible
- The cost of pursuing unpaid fines through civil enforcement is a deterrent
- Information necessary to easily locate offenders has been made more, rather than less, difficult to obtain because the level of government collecting the fine is no longer the one that maintains the information databases.

We would add to this list: not fully screening out cases that will be uncollectible; not leveraging available collection tools to the fullest practical extent; and not adopting technologies commonly used in the collection industry.

Enforcing payment is integral to the fair administration of justice

Enforcing the payment of fines is integral to ensuring the fair administration of justice and to deterring future violations. The purpose of defaulted fine collection management, clearly stated in Court Services Program Map is:

*"In support of having persons comply with court orders, ensuring steps are taken to collect fines **provides the public with assurance that laws are effective and fines are a meaningful deterrent when laws are broken.**"¹⁴ [emphasis added]*

¹³ Certain set fines and applicable fees have increased over time

¹⁴ Source: Court Service 2018 Program Map <https://www.toronto.ca/wp-content/uploads/2017/11/920d-Program-Map-Court.pdf>

Managing Defaulted Fines at the City

A fine becomes more expensive once the collection process begins

Failure to pay a court-ordered fine on time will result in the fine going into default. Court Services is notified of newly defaulted fines by the Province on a monthly basis. Defaulted fines are subject to additional fees and a variety of enforcement tools. The majority of fines become more expensive for the debtor after the due date passes and the collection process begins.

Defaulted fines will be listed with a collection agency and the City may take additional enforcement action

Where fines in default remain unpaid, the City has some tools at its disposal to encourage payment.

Most defaulted fines will be placed with a collection agency. Collection agencies send letters and conduct follow-up calls to encourage individuals to pay the debt and/or offer payment plans if necessary. Collection agencies are paid a commission when they successfully recover defaulted fines. Under the *City of Toronto Act, 2006*, the City has been able to recover these costs directly from the debtor, so there is no direct cost to the City¹⁵.

Other collection tools used by Court Services

In addition, a variety of other tools are currently used by Court Services including:

- Adding the fine amount to property tax rolls
- Filing certificates of default
- Providing direction to the MTO that a driver's licence be suspended or no license be issued until the defaulted fine is paid
- Providing direction to the MTO that a licence plate renewal be denied until the defaulted fine is paid.

¹⁵ Amendments to the POA in 2017 enable these collection agency costs to be added to the fine amount.

AUDIT RESULTS

This section of the report contains the findings from our audit work followed by specific recommendations. This report discusses systemic challenges and issues facing the Division in its management of defaulted Provincial Offences Act (POA) fines. Next, it examines the effective use of current and potential enforcement tools available to the City. The report goes on to recommend that a strategic plan for collections be established against which performance can be assessed and reported. Finally, it discusses the need to centralize collection efforts for receivables in default.

A. APPLY A METHODOICAL, CONSISTENT, AND TIMELY APPROACH TO COLLECTING DEFAULTED FINES

Strategic goal to reduce the number and value of defaulted POA fines

In a 2005 report to City Council, Court Services indicated its strategic goal for fine collection was to "**Reduce the number and value of defaulted POA fines**". In support of this, the Division specified four principles underpinning its strategy:

1. All POA fines should be collected
2. All outstanding POA fines should be treated equally
3. All persons owing POA fines are to be treated with respect and dignity
4. The City will use all available tools to carry out its duty to collect POA fines

Enforcing fines is critical to the administration of justice

According to the Court Services Division 2018 Program Map:

*"ensuring steps are taken to collect fines **provides the public with assurance that laws are effective and fines are a meaningful deterrent when laws are broken.**" [emphasis added]*

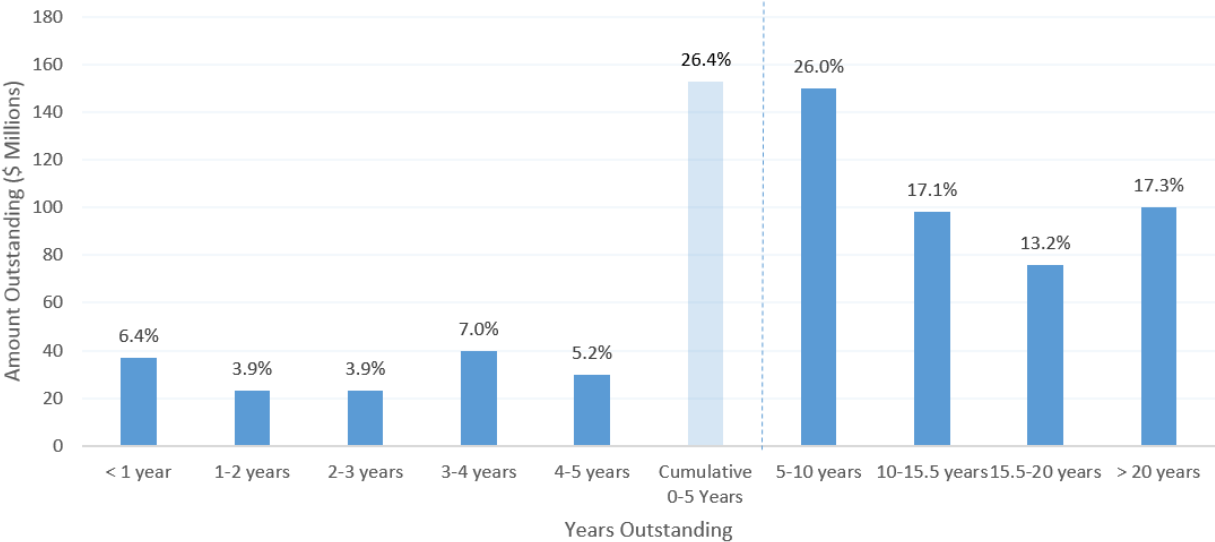
Prompt collection action must be taken

Court Services needs to be more systematic in taking prompt collection action on defaulted fines. Taking prompt action is vital in collecting debts. At June 30, 2017, 74 per cent of fines in default have been outstanding for more than five years.

74% of the \$577 million in defaulted fines have been outstanding for more than five years

Figure 5 provides an analysis of the age of the defaulted fines. Regardless of the age of the fine, convicted offenders are required to pay them, as debts to the Crown are owed in perpetuity and cannot be forgiven.

Figure 5: POA Defaulted Fines as at June 30, 2017, Aged by Enforcement Date



Probability of collection drops according to the length of the delinquency

It is widely accepted that the probability of full collection of delinquent accounts drops dramatically as time passes. The Auditor General of Ontario's 1997 report on the Ministry of the Attorney General - Courts Administration Program (which included POA fines prior to the transfer of authority for collections to municipal partners) clearly stated:

"The longer an account is outstanding, the more difficult it is to collect. Accordingly, delays in collection are resulting in significant loss of revenue to the province."

Court Services framework for collections should be comprehensive in nature and consistent with industry best practices

Court Services also needs to be more strategic when pursuing unpaid debts. The Division needs to ensure its framework and processes to oversee and manage the collection of court fines are comprehensive in nature, methodically implemented, and consistent with best practices in the collection industry. Specifically, Court Services needs to:

1. Devise specific strategies to pursue difficult to collect accounts based on key risk factors and predictive analytics
2. Establish stronger processes to oversee and manage collection agencies, including timely assignment of accounts
3. Modernize the use of data and technology to track, manage and report collection activities

Each of these areas is further described in this section of the Report.

A.1. Devising Collection Strategies for Difficult to Collect Accounts

The collection strategy is generally the same for the majority of defaulted fines – they get assigned to collection agencies¹⁶.

Collection strategies should be devised for difficult to collect accounts

However, collection rates for certain types of accounts tend to be much lower. Because they are more challenging to collect, the City should devise more effective collection strategies for:

- High-dollar accounts
- Corporations
- Repeat offenders

Given the unique challenges presented by these categories, actions taken should address the specific characteristics of the debts. The approach can include using multiple enforcement tools, having multiple interventions via periodic written reminder notices, as well as an increased focus on identifying an offender's property and assets which could be subjected to civil enforcement measures. Legislative changes or changes to the City's agreement with the Ministry of the Attorney General may also be needed.

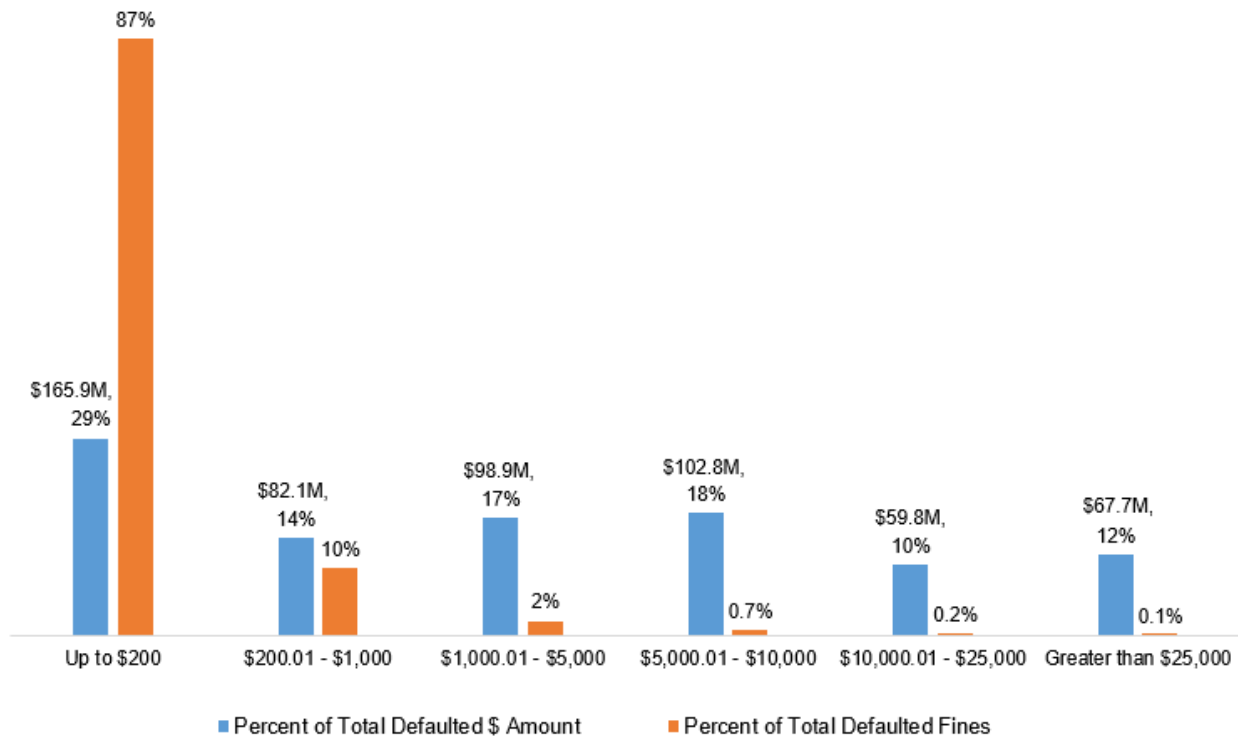
¹⁶ Except for a small proportion of cases where they are referred to Legal Services for advice on the nature of collection action to be taken.

High-dollar Accounts

Fewer high-dollar fines in default, but they account for a high proportion of the total amount owing

The vast majority (87 per cent) of all defaulted POA fines are for less than \$200. However, as shown in Figure 6, the amount of money from these low-dollar fines represents less than 30 per cent of the total dollar amount owed to the City. There are far fewer high-dollar fines in default, but they account for a high proportion of the total amount owing.

Figure 6: Proportion of Cases and Dollars in Default, by Fine Amount



600 accounts owing \$50,000 or more

As at June 30, 2017, there were at least 600 individuals and organizations who owed \$50,000 or more in fines. The total amount outstanding was approximately \$84 million.

Agencies have been largely unsuccessful at collecting high-dollar accounts

Typically, high-dollar accounts arise from large penalties imposed due to the serious nature of the offence(s), and/or from multiple offenses accumulated over a period of time. Collection agencies have been largely unsuccessful at collecting on these accounts. In October 2016, Court Services decided to recall high-dollar accounts from its collection agencies. At the time of our audit, at least \$27 million in defaulted fines related to high-dollar accounts were not re-assigned to a collection agency for action. While many of these cases were reviewed by Legal Services, they were returned to Court Services for COD filing. However, in many cases, no action was taken. Therefore, collection strategies to deal specifically with high-dollar accounts are needed. For example:

- A company and its owners together have over \$575,000 in default related to violations of an industry act. The fines defaulted in September 2016. The company is still in operation, but has not made any payment towards their outstanding fines. Court Services advised that, due to an administrative error, they had not filed a Certificate of Default on each of the defendants. No collection action has been taken including assignment of the account to a collection agency.
- An individual has over \$106,000 in default since December 2016. Court Services advised that, due to an administrative error, they had not filed a Certificate of Default. No collection action has been taken including assignment of the account to a collection agency.
- A numbered company has been in default for over \$50,000 since August 2016 for a fire prevention-related charge in 2013. Court Services advised that although a Certificate of Default would have been appropriate, they have not yet filed one. Minimal enforcement action has been taken; the account was only assigned to a collection agency for three days.

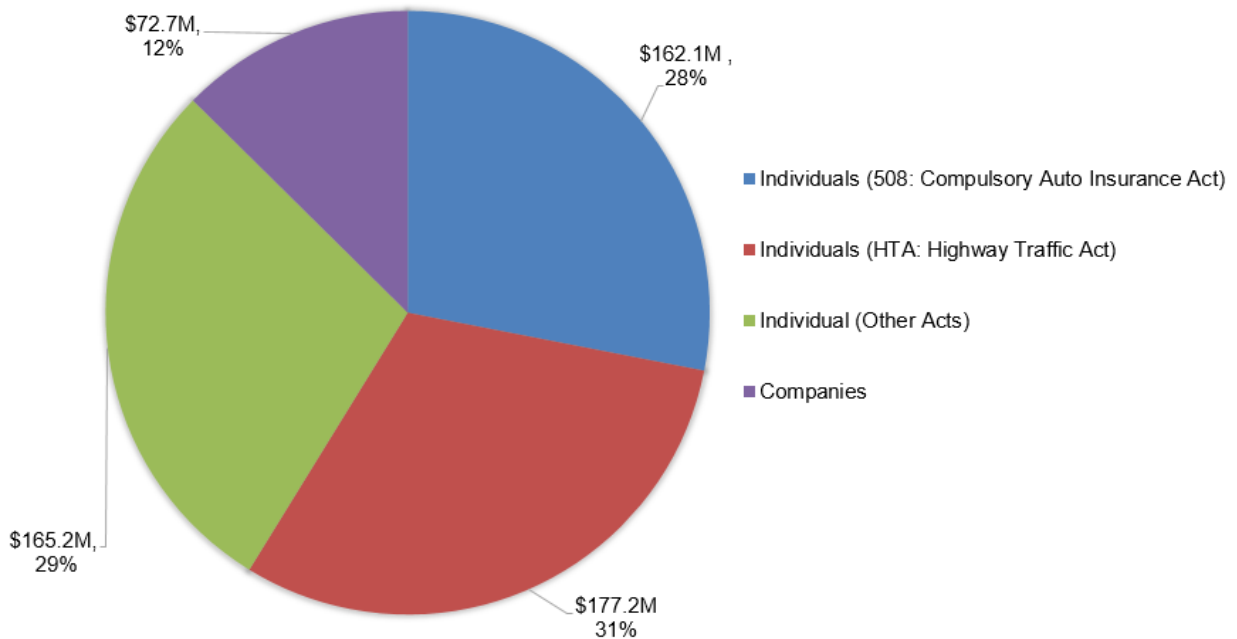
The strategy for high-value cases needs to be clear, methodical, and reflect that greater diligence and effort needed to enforce the collection of these accounts.

Corporations

Companies are in default for over \$72 million in fines

Corporations or other business entities are in default for approximately \$72 million (more than 75 per cent of cases are 20 years or older). Figure 7 shows that 12 per cent of defaulted fines relate to companies.

Figure 7: Proportion of Defaulted Fines Owed By Individuals and Companies



Many of the available collection tools do not apply to companies

Given that tools such as driver's licence suspension and often times single-plate denial cannot be applied to corporations, and corporations can go bankrupt or change ownership, it is important to develop strategies to deal specifically and swiftly with corporations. For example:

- A company has nearly \$41,000 in default for a fire prevention-related offence committed in March 2013. The account has been in default since October 2014. City records showed that this company owned property that was in significant tax arrears in 2011. The amount was paid in full in April 2014 as a result of Revenue Services registering a Tax Arrears Certificate against the title of the property. When this fine went into default, it should have been immediately added to the property tax roll or a Certificate of Default filed together with a writ of seizure and sale. This account was assigned to a collection agency for action. As a result of our audit, Legal Services requested that the fine be added to the tax roll of the property owned by the debtor.
- An eating establishment was fined for public health related violations in July 2013 and was required to pay by December 2013. Nearly \$36,000 still remains in default. The only action taken has been to assign this account to a collection agency.
- A company has nearly \$32,000 in default related to a fire prevention-related offence since October 2016. Minimal collection action has been taken; the account was only assigned to a collection agency for one week.
- A company has a fine of nearly \$55,000 for a bylaw-related offence that has been in default since July 2015. Even though Court Services filed a Certificate of Default on April 19, 2016 for a different fine, one was not filed for this \$55,000 defaulted fine. The only action taken for this fine has been to assign it to a collection agency.

Repeat Offenders

Over 10,000 offenders have 25 fines or more in default

Of the two million cases with defaulted fines, there are over 10,000 defendants with 25 fines or more. Some repeat offenders are being charged with offences that can impact the safety of other citizens. For example:

- There is an individual with 38 offences totalling nearly \$130,000. Of these, eight relate to driving without insurance and 16 relate to Highway Traffic Act (HTA) offences including careless driving. The individual has had their licence suspended and plates denied. We do not know if this individual is still driving a vehicle.
- There is an individual with 38 offences totalling over \$125,000. Of these, six relate to driving without insurance and 12 relate to HTA offences including speeding. The individual has had their licence suspended. We do not know if this individual is still driving a vehicle.
- There is an individual with 21 offences totalling over \$215,000. Of these, nine relate to driving without insurance and 11 relate to HTA offences including disobeying a stop sign/failing to yield to traffic. The individual has had their licence suspended. We do not know if this individual is still driving a vehicle.

Strategies are needed to uphold the administration of justice

As these defendants are repeatedly committing offences and not facing the consequences of their actions, it is important to ensure strategies are working to uphold the administration of justice and deterring behaviour that can be harmful to public health and safety.

Offenders Without the Financial Means to Pay

We are also aware that there are individuals in society who do not have the financial means to pay a fine. The Ontario Association of Police Services Boards in their 2011 White Paper recognized that:

Alternative penalties for those without the financial means to pay can better support sentence fulfillment

"Some offenders simply do not have the financial means to pay a given fine, no matter how deserved ... Stakeholders note that the problem is especially acute for impoverished and repeat offenders ... Some stakeholders have proposed community service as an alternative to financial payments ."

The Association recommended that POA courts be authorized to assess an individual's ability to pay and, where warranted, allow for alternative sentencing such as community service in lieu of fine payment.

Recommendations:

- 1. City Council request the Director, Court Services, to devise collection strategies specifically to address difficult to collect defaulted fines and apply the strategy in a methodical and consistent manner.**
- 2. City Council request the Director of Court Services, in consultation with the City Solicitor, to request the Province to consider if additional sanctions can be applied where defendants are repeatedly committing offences (and in particular, offences that have the potential to impact public health and safety) in order to improve opportunities for enforcement where defendants continue to fail to pay the related defaulted fines.**
- 3. City Council request the City Manager, in consultation with the City Solicitor, to request that the Province pass regulations that, despite subsection 165(3) of the Provincial Offences Act, will allow a defendant to apply to a justice to reduce or expunge a defaulted Provincial Offences Act fine where the defendant meets the criteria for inability to pay defined in the regulations.**

A.2. Improving Oversight of Private Collection Agencies

Only \$18.5 million was recovered by collection agencies over 3 years

Court Services uses seven collection agencies to pursue outstanding fines. These agencies have recovered approximately \$18.5 million of the \$300 million assigned to them from 2014 to 2017. Over 60 per cent of accounts collected have been in default for less than five years.

As of June 30, 2017, there were approximately 516,000 cases with \$282 million in defaulted fines listed with collection agencies.

Court Services needs to improve how it manages accounts assigned to collection agencies

Assignment of accounts to private collection agencies is central to Court Services' approach to collection. The Division needs to improve how it manages them by:

- Providing the debts to the private collection agencies on prompt basis
- Applying a methodical, consistent, and timely approach to account assignment, re-assignment, and rotation
- Setting performance targets and addressing under-performance
- Improving debt tracking and data sharing.

Accounts Need to be Promptly Assigned to Agencies

10 years ago Internal Audit found that Court Services was slow to assign accounts to collection agencies

More than 10 years ago, the City's Internal Audit Division found that Court Services was slow to assign accounts to collection agencies, transferring batches at intervals of five to six months. Internal Audit stated in their report:

"General experience has shown that the longer a fine is outstanding the more difficult it is to collect. To improve the opportunity for success of fines collection, Court Services needs to transfer overdue fines to agencies on a timely basis."

At that time, Internal Audit recommended that Court Services promptly distribute defaulted fines to collection agencies within 30 days of the expiry of the payment due date. Court Services agreed to implement this recommendation and management indicated that they would assign accounts monthly beginning with the August 2007 placement.

We found that accounts are still not assigned to agencies on a timely basis. While the majority are eventually placed, our view is that many should have been assigned sooner. Table 1 below shows some examples of delays in sending cases to Tier 1 collection agencies, for a sample of large placements made in September 2016, February 2017, and July 2017.

Table 1: Examples of Delays in Assigning Accounts to Tier 1 Agencies

Age of account when it was assigned:	# of defaulted cases	Total amount
Six months or more in default	2,766	\$1,235,132
3 to 6 months in default	14,687	\$6,298,624
2 to 3 months in default	6,380	\$2,612,200
1 to 2 months in default	7,559	\$2,953,616
Within 1 month of default	2,677	\$977,316
Total Assigned to Tier 1 Collection Agencies	34,069	\$14,076,888

Collection rates potentially impacted by delayed assignment to agencies

Furthermore, it is our view that the rate of collection is potentially impacted by delays in the collection agencies receiving the accounts from the City. Taking prompt action is vital in collecting debts. It is widely accepted that a fine in default becomes more difficult to collect as time passes.

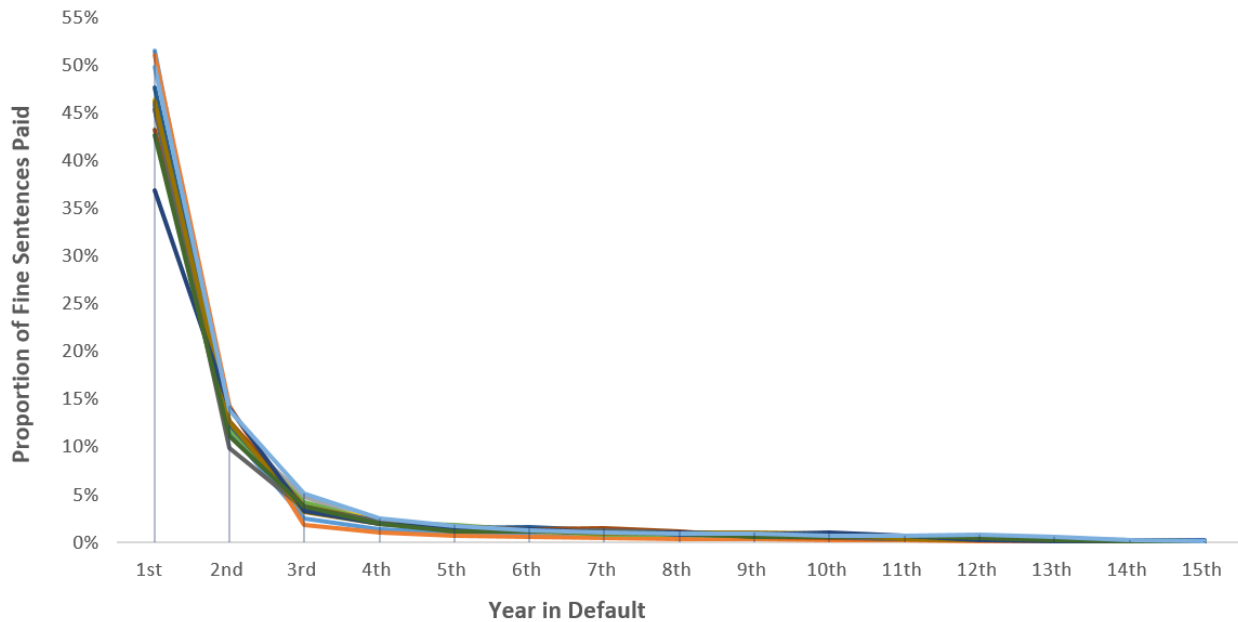
A recent survey of its members conducted by an association that represents commercial collectors responsible for 60 per cent of the claims in the United States found that:

- **after three months**, the probability of collecting on an account drops to less than 70 per cent
- **after six months**, collectibility drops to about 50 per cent
- **after a year**, it drops to a little over 20 per cent
- **after two years**, the probability of full collection on a delinquent account is less than 10 per cent.

We recognize that POA fines are not the same as commercial debts, so we reached out to another jurisdiction to confirm whether their experience in collecting court fines was similar to the research above. The jurisdiction noted that the above *"concept is certainly correct and the figures should be close"*, although the percentages may not match exactly.

We also reviewed Court Services' own models (depicted in graph form in Figure 8) and found that after two years have passed, collection drops dramatically.

Figure 8: Court Services' Model of Fine Collection over Time, by Sentence Year



Speed and Frequency in Reassigning Cases to Collection Agencies Needs Improving

Cases are not always actively rotated

Court Services also needs to improve the speed and frequency at which it re-assigns cases to collection agencies in order to have a better chance at collecting debts. During the period covered by the current collection agency contracts (from 2014 through June 2017):

- Tier 1 cases were only recalled and re-assigned once, in February 2016.
- A significant number of cases were not re-assigned. As at June 30, 2017, 21 per cent of Tier 1 cases (\$6.6 million) and 36 per cent of Tier 2 cases (\$55.8 million) had been with the same collection agency for more than two years.
- While 185,000 cases (totalling \$148 million) were recalled and rotated within Tier 2, it took an average of eight months before accounts were reassigned. Of these, 25 per cent of them went back to the same agency.

An active recall strategy helps to ensure accounts are worked thoroughly

An active recall strategy, with rotation of accounts as frequently as every six months, can help incentivize improved agency performance by generating competition for Court Services' accounts. A more active rotation schedule that moves a file after several months (rather than years) from one agency to another also helps to ensure the files are worked thoroughly. Prompt action should be taken when assigning, re-assigning, and rotating cases because generally, collection rates are higher the earlier action is taken.

Incentives Should be Used to Motivate Performance

Court Services has established a quarterly performance evaluation process for its contracted collection agencies. The Division assesses collection agency performance relative to the performance of the other agencies rather than collection targets or the expected rates indicated in Request for Proposal (RFP) submissions.

Accounts are evenly distributed regardless of agency performance

Management of collection agencies can be strengthened by basing future assignments on performance. Court Services current process is to focus on distributing accounts evenly.

Assigning accounts based on performance can motivate improved collections

By contrast, the City of Ottawa evaluates agencies on their performance every three months, and gives the highest performing agency five per cent more cases in subsequent assignments. At York Region, each collection agency must provide a target recovery rate as part of its bid submission. This rate becomes their performance target for the duration of the contract. After the first year, any agency that does not meet its target, as well as the lowest performing agency, may not have their contract renewed.

Improve Debt Tracking and Data Sharing

Court Services is inconsistent in what information it requires collection agencies to return

Information related to whether the debtor is deceased, bankrupt, or incarcerated is meant to be shared with the City. Court Services is inconsistent in what information it requires from agencies. For example, while the RFP requires agencies to forward bankruptcy information to the City, the service level agreement does not include this requirement. Most agencies are not providing this information to the City. As a result, the City may continue to pursue cases that should have been identified as uncollectible.

Court Services does not have a system to store updated information that can be returned by agencies

The 2014 RFP includes a requirement for agencies to scrub all new files using address correction software and return files to the City as required. There are no other requirements included in the RFP or service level agreement to forward any other valuable information including updated contact, employment, or asset information back to the City.

Management advised that collection agencies can make information available for return to Court Services including updated address, residential phone number, place of employment and phone number, and email address. However, they do not have anywhere to store this information because they cannot enter it into ICON. This is a missed opportunity to obtain valuable information for debt collection and to avoid duplication of efforts.

Opportunities Exist to Improve Management of Collection Agencies

New RFP presents an opportunity to improve how the City oversees and manages collection agencies

The current contracts will expire in August 2018. In developing the new RFP, Court Services should consider some potential areas for improvement, such as:

- Defining collection targets and establishing additional performance measures against which collection agencies can be assessed and held to account
- Requiring enhanced information sharing from agencies

- Creating an additional tier of agencies to focus specifically on challenging cases. Agencies are likely to charge a higher commission rate for these cases, but this added cost is ultimately recovered from the debtor.

At the same time, agencies must continue to abide by codes of conduct and the City's goodwill approach to collections.

Recommendations:

4. **City Council request the Director, Court Services, to ensure that outstanding Provincial Offences Act fines are assigned to and rotated from its collection agencies on a consistent and timely basis, in compliance with its collection procedures.**
5. **City Council request the Director, Court Services, to make improvements to the Division's management of collection agency contracts, incorporating changes to performance management criteria and incentives, information sharing requirements, and structure of account assignments into future procurement processes, where applicable.**

A.3. Modernizing the Use of Data and Technology

Accurate information is critical for successful collection

Comprehensive and up-to-date debtor information is critical for successful collection.

Court Services does not obtain updated information from collection agencies

Updated debtor information obtained by collection agencies through tracing activities is not transferred back to Court Services. As a result, the Division also has to contract a separate skip tracing company to attempt to find debtors. The success rate of this company is low.

Data sharing is essential for Court Services to be able to efficiently and effectively find debtors

The Ontario Association of Police Services Boards highlighted in their 2011 White Paper that:

"Data sharing and cooperation is essential ... Stakeholders urge that datasets should be linked so that, for example, ICON records are automatically updated with current addresses from MTO's database so that municipalities can then locate offenders and collect from them. Due to privacy concerns, such consolidation needs to be approached very carefully in order to ensure legitimacy in the eyes of the public."

Data sharing may be possible when it is used for a consistent purpose, such as collection of POA fines, or the enforcement of the law. With improved data sharing, there may be an opportunity to improve the quality of debtor information. For example, available information from other City databases (e.g., Parking Tags, Property Tax/Utilities, Business Licensing and Enforcement, Vendor Masterfile) as well as third-party databases (e.g., Ministry of Transportation, Ministry of the Attorney General, Municipal Property Assessment Corporation, Land Registry, credit monitoring agencies) may yield additional information. Before undertaking any data sharing, a review of relevant privacy considerations should be performed.

Data matching should be performed periodically

Court Services should re-perform comprehensive data matching periodically to locate individuals that were previously untraceable. Debtors' circumstances may change over time. For example, the debtor may move away from or return to the city; or acquire property, driver's licence, or vehicles; or obtain employment.

Court Services does not have a system to store updated tracing information

Court Services advised that it is not permitted to update debtor information in the provincial ICON system without court documents. In order to be able to store and make use of any additional information acquired, the Division needs a system capable of housing this information. The lack of such a system is a significant barrier to effective collection.

The ICON System is Insufficient to Manage Collections of Defaulted Provincial Offences Fines

The Province's ICON system is not adequate for the City's collection purposes

Court Services is required to use the Province's ICON system. However, this requirement does not prevent the Division from implementing other systems that would help it to be more efficient and effective in fulfilling its responsibilities.

The Auditor General of Ontario has repeatedly noted system limitations and the need for modernization (1997, 2003, 2008, and 2016).

City was fully aware of system deficiencies in 2002

At the time responsibility for POA courts was transferred to the City, the City was fully aware that

"The province's existing court administration system, the Integrated Court Offences Network (ICON) is outdated, slow and does not have the features required for the effective management of the large caseload in the Toronto courts."¹⁷

Court Services has been able to bring about incremental improvements to ICON

The City (and other municipal court administrators) have also raised concerns regarding the reliability of ICON to the Province. While a working group of municipal court administrators has been able to effect incremental improvements, changes have taken a long time to implement and not all issues have been addressed. The gap between what is needed and the functionality in the ICON system for collection purposes remains significant.

ICON is not used to fully track collection efforts

For example, Court Services advises it is unable to use ICON to maintain complete documentation and records of collection actions taken. Therefore, it is difficult to efficiently demonstrate that the Division has fulfilled its responsibility to exhaust all reasonable collection efforts.

¹⁷ <https://www.toronto.ca/legdocs/2001/agendas/council/cc010724/pof11rpt/cl001.pdf>

City's Internal Audit Division identified that Court Services needed its own system to supplement ICON more than 10 years ago

More than 10 years ago, the City's Internal Audit Division identified a need for an internal system capable of managing POA activities which would supplement the ICON system with specific functionality to:

- monitor the performance of collection agencies
- track overdue fines
- trigger reminders and generate lists for follow-up
- provide timely and accurate management information.

At that time, Internal Audit recommended that Court Services consider procuring or developing a system to track and manage the collection of outstanding POA fines. Court Services still does not have a collection management system.

Court Services needs a system to effectively manage collections

With over two million cases with fines in default, and many more cases continuing to go into default on a monthly basis, it is critical that the City implement its own collection management system.

Leveraging technology to support collections

Technologies to support debt collection have evolved significantly over the last 15 years

Over the 15 years since Court Services has assumed responsibility for enforcing offences by collecting fines, technology has evolved. The technical advancements adopted by Court Services have helped to move the City forward; however, it appears that these technologies continue to lag behind what is common place in the collection industry.

There exist collection management systems in the marketplace with a range of capabilities that support:

- bulk importing of debt data
- workflow management and case history for multiple streams / approaches to collection
- predictive analysis of collectibility based on consolidation and updating of information
- generating correspondence (e.g., letters of late payment, dunning notices, etc.)
- tracking of payment plans

- integration with telephone technologies to support both inbound phone calls and outbound dialer activities
- web and mobile device integration
- centralized management reporting
- consolidation of skip tracing information and reporting from collection agencies and internal staff
- uploading to other organizations (e.g., CRA) for collection.

Although there would be a cost to any new system, such costs may be more than offset by improved recoveries of outstanding debts. Alternatively, the City could contract a service provider to effectively support the collections workflow, consolidation and integration of debtor information, and tracking of this high volume of overdue accounts.

Section D of this report discusses the need for increased oversight of the collections function at the organizational level. How the City chooses to proceed may affect the optimal approach to meeting Court Services information system needs, and should be considered when developing a solution.

Recommendations:

- 6. City Council request the Director, Court Services, in consultation with the City Solicitor, to:**
 - a. Review the feasibility of obtaining updated debtor information by matching against or tracing to other sources, such as City or provincial databases**
 - b. Implement processes to use, wherever possible, the updated debtor information to pursue collection of debts.**
- 7. City Council request the Director, Court Services, to establish documentation standards to ensure that pertinent information about the collection actions taken for Provincial Offences Act fines in default are appropriately tracked and documented.**

8. **City Council request the Director, Court Services, in consultation with the Chief Information Officer, to implement an information system, either independently or as part of an organization wide review, that allows it to effectively manage the collection of outstanding Provincial Offences Act fines.**

B. LEVERAGE TOOLS FOR DEBT COLLECTION

Continuous improvements are needed to manage the growth in overdue fines

Since 2002, the City (as well as court administrators in other municipalities) has advocated for a number of improvements to support the collection of defaulted Provincial Offences Act (POA) fines. As a result, over time, legislative changes have opened and may continue to open new or improved tools to encourage payment.

An effective use of collection tools is needed to effectively limit the growth in overdue fines. We found that:

1. Some tools available to Court Services can be used more effectively.
2. There are opportunities to enhance collection tools by continuing to seek legislative changes through the Province.
3. Other jurisdictions are using additional tools and channels for collection that Court Services has not yet been able to implement.

Table 2 summarizes our findings in these three areas. The findings are then discussed in detail in the sections of the report that follow. Continuous improvements will promote a more consistent and coordinated approach to collecting and enforcing fines.

Table 2: Collection Tools Used by Court Services and/or Other Jurisdictions

	Needs Improvement	Not Currently in Use or Not Available for Use	Legislative Changes Can Improve Use
B.1.1. Suspending of driver's licences ¹⁸	X		
B.1.2. Single plate denial and multi-plate denial ¹⁹	X		X
B.1.3. Certificates of Default needed to pursue additional civil enforcement *	X		
B.1.4. Adding debts to the property tax roll	X		X
B.2.1. CRA Refund Set-Off		X	
B.2.2. Requiring payment of fines as a condition for business licences	X		X
B.2.3. Promoting early payment of fines through:			
• Discounts for early fine payment			X
• Charging interest			X
• Maintaining regular contact through written demand (dunning) notices	X		

Note: (*) CODs, in large part, were filed by Court Services for accounts where property and employment information were not known. As a result, our audit sample did not include CODs where additional enforcement action (writs, garnishments, and examinations in aid of execution) could be taken. We do note that nothing came to our attention during the audit to indicate that Legal Services had not taken additional civil enforcement action where it was available to be taken.

B.1. Improving the Use of Available Collection Tools

B.1.1. Drivers' Licence Suspension

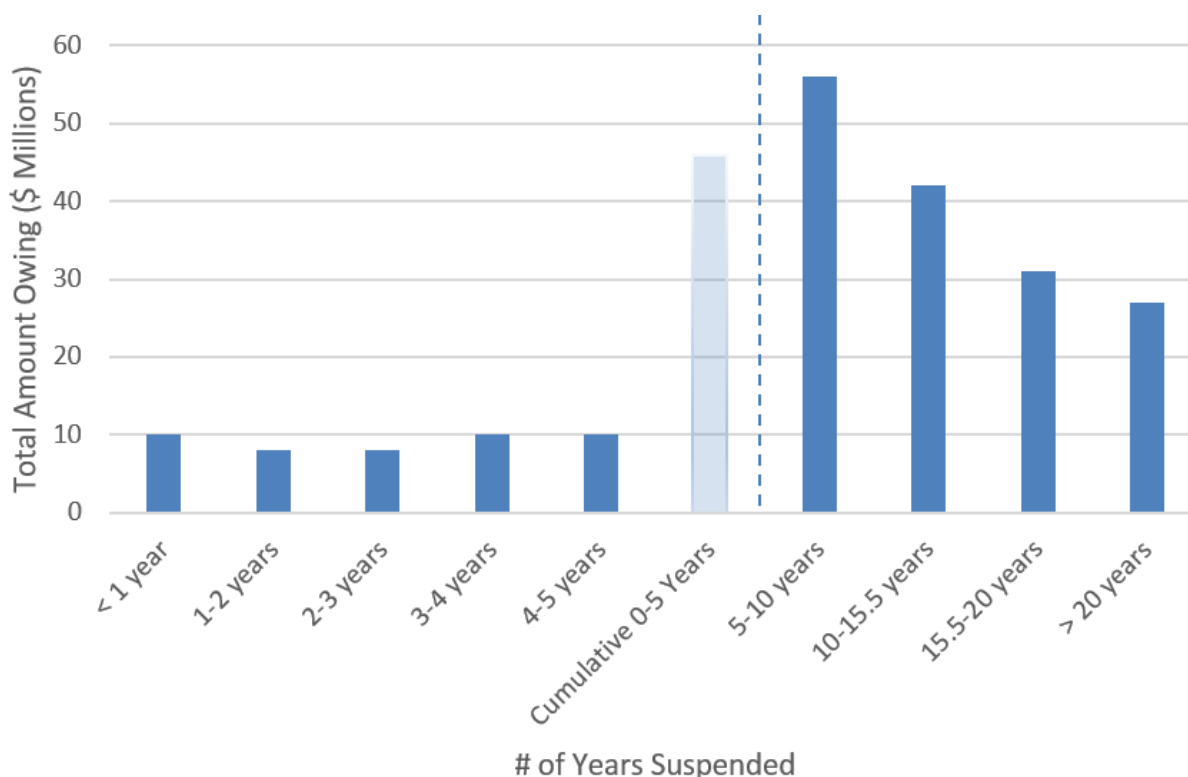
Licence Suspension

The ability to suspend licences for defaulted fines related to driving-based offences came into effect in 1973. The audit showed that over \$156 million in fines have remained in default for 5 years or more even though driver's licences have been suspended. Figure 9 summarizes the aging of suspended licences.

¹⁸ Court Services is responsible for reviewing defaulted fines eligible for licence suspension that are then transmitted to the MTO to action

¹⁹ Court Services is responsible for reviewing defaulted fines eligible for single-plate denial that are then transmitted to the MTO to action. Multi-plate denials are actioned by MTO after licences have been suspended

Figure 9: Age of Defaulted Fines Where Licences are Confirmed to Have Been Suspended



Ensuring Licences are Suspended Consistently

When licences are suspended, suspension occurs in a timely manner

We were able to confirm that *when* licences are suspended by the Ministry of Transportation (MTO), suspension is occurring in a timely manner. Our challenge was that we could not confirm that *all* licences that were thought to have been suspended were, in fact, suspended.

Suspension information being used by Court Services does not appear to be consistent with MTO's ARIS system

Court Services does not reconcile the information it uses from ICON with MTO's ARIS system to confirm that licences are, in fact, suspended. A reconciliation performed by Court Services for our audit, indicates that approximately:

- 19,000 cases with \$16 million in default show up in ICON as suspended, when, in fact, they were not
- 12,000 other cases with \$9.6 million in default show up in ICON as suspended, where MTO records indicate the debtor is deceased. This does not appear to have been captured in the ICON system used by Court Services.

There is at least a small proportion of defaulted fines that are eligible for suspension that have not yet been sent to the MTO

There also appears to be cases where the ICON system:

- identified cases as being eligible for driver's licence suspension that were not sent for suspension (7,010 cases, \$4.5 million)
- did not properly identify cases as being eligible for driver's licence suspension and, therefore, the cases were not sent for suspension (40,000 cases, \$5.5 million).

There may be an issue with the system or the way it is being used by Court Services. This notwithstanding, in our testing we identified cases that appear to be eligible for suspension, including cases that originated prior to the transfer of responsibility for Provincial Offences to the City. These cases should be reviewed further by Court Services and, where eligible, cases should be sent to the MTO for licence suspension.

Recommendation:

- 9. City Council request the Director, Court Services, to:**
 - a. Undertake a review of unmatched driver's licence suspensions in ICON and the Ministry of Transportation's ARIS system, as well as other cases that need resolving, to determine whether additional cases with defaulted fines are eligible for suspension and take appropriate action**
 - b. Implement a process to periodically review or compare defaulted Provincial Offences Act fines eligible for licence suspensions and plate denials against data from the Ministry of Transportation to identify and resolve data synchronization issues. If necessary, the City Manager request the cooperation of the Ministry of the Attorney General and Ministry of Transportation.**

B.1.2. Single and Multi-Plate Denial

Multi-Plate Denial

Single-plate denial has been an enforcement tool for certain vehicle-based offences for a number of years. In May 2017, after Bill 31 (*Making Ontario's Roads Safer Act*) came into effect, expanded multi-plate denial was introduced to include certain driving-based offences with a conviction date on or after May 1, 2010. Once the debtor's licence is suspended, all plates owned by the debtor are denied.

There are situations where plate denial does not apply

Nearly 60 per cent of defaulted fines relate to the Highway Traffic Act (HTA) or Compulsory Automobile Insurance Act (CAIA), yet more than one third of these fines are not subject to licence suspension (and in turn multi-plate denial) or single-plate denial.

Plate denial does not apply if the debtor is not the registered owner of the vehicle in which the offence was committed. It also does not apply to companies (such as moving or rental companies) cited for commercial motor vehicle-based offences.

Limited enforcement tools for companies with vehicle-based offences

Some companies do not pay their fines. As at June 30, 2017, companies owe nearly \$4 million for defaulted fines related to HTA and CAIA offences. For example:

- a non-emergency medical transportation company has nearly \$6,700 in defaulted fines related to 24 HTA offences
- a towing company has over \$4,700 in defaulted fines related to one HTA offence
- another towing company has \$4,500 in defaulted fines related to 12 HTA offences. This towing company currently has active business licences / plates issued by the City
- a vehicle emission test centre has over \$8,200 in defaulted fines related to one HTA offence.

According to Fred Kaustinen, Executive Director of the Ontario Association of Police Services Boards "The biggest bang for the buck would be the denial of licence plate stickers," in fact, "new licence-reading technology makes it possible to rapidly identify delinquent plates".

The City should discuss with the Province to determine whether additional sanctions can be established to issue single plate denials for the companies where:

- fines for offences involving a company-owned vehicle are not paid, or
- companies do not pay fines related to HTA or CAIA offences.

Gain assistance from enforcement agencies in collection efforts

Court Services should enter into or expand upon their relationships with enforcement agencies and other bodies to gain their assistance in collection efforts. For example, management advised that the Ministry of Transportation and the Ontario Motor Vehicle Industry Council receive reports from the Province when commercial vehicle operators or motor vehicle dealers have been convicted of POA offences. The City can request these bodies to refrain from issuing or renewing a registration or licence until all defaulted fines have been paid.

Finally, the Ontario Association of Police Services Boards 2011 White Paper highlights that:

"Many stakeholders urge that both programs [licence plate denial and driver's licence suspension] be expanded to other vehicle and non-vehicle POA offences, such as labour and environmental violations ... Manitoba, Nova Scotia, Newfoundland and Labrador ... these jurisdictions routinely suspend driver's licences for fines unrelated to road safety offences. Some stakeholders urge Ontario to enact similar rules to improve collection of POA fines." [clarification added]

Recommendations:

- 10. City Council request the Director, Court Services, in consultation with the City Solicitor, to encourage enforcement bodies involved in Provincial Offences Act prosecutions to utilize enforcement tools that may be available to them that are likely to assist in encouraging the payment of Provincial Offences Act fines by:
 - a. Identifying enforcement agencies that may have enforcement tools that could promote the payment of fines, like licensing requirements or conditions that require the payment of outstanding fines**
 - b. For any agency identified in a), writing to the head of the respective agency to advise them of the relevant Provincial Offences Act fines that are currently in default and a summary of how enforcement tools that may be available to them could assist in encouraging the payment of Provincial Offences Act fines.****
- 11. City Council request the City Manager to request that the Province consider whether additional sanctions, such as single-plate denials, can and ought to be established where fines for offences involving a company-owned vehicle are not paid, or companies do not pay fines related to HTA or CAIA offences.**

B.1.3. Certificate of Default with Additional Civil Enforcement Action

Certificates of Default are most effective when accompanied by further civil enforcement action

When a fine is in default, a civil judgment can be obtained by filing a Certificate of Default (COD) in either Small Claims Court (for accounts less than \$25,000) or the Superior Court of Justice (for accounts with at least \$25,000).

Legal Services advised that after a COD is filed, a demand letter is sent to the debtor. Filing a COD also enables the City to pursue further civil enforcement actions, such as:

- Writs of seizure and sale²⁰
- Garnishment (e.g., wages, bank accounts)²¹
- Examinations in aid of execution²²

According to the 2015 Operating Budget Briefing Note on Unpaid Provincial Offences Fines, indicated that a:

"necessary condition for civil enforcement to be an effective and efficient enforcement tool is for the debtor to have assets, particularly assets in the form of real property."

Therefore, we expected Court Services to focus on obtaining CODs in cases where there was known employment or property information about the debtor.

Ensuring Certificates of Default are Filed

Court Services is not following Legal Services' advice on filing CODs in a timely manner

Court Services is expected to file CODs for cases where Legal Services intends to pursue civil enforcement. Out of a sample of 10 requests, only one COD was filed by Court Services. The CODs identified in our sample are part of over 200 CODs that Legal Services requested for high balance accounts. Court Services has not been fulfilling these requests in a timely manner.

²⁰ A writ of seizure and sale is a document the court issues to help collect money that is owed. Writs are filed with the sheriff in the jurisdiction where the debtor owns assets. Where a debtor owns a home jointly with a spouse or some other person, the property can still be sold under a writ of seizure and sale, but the creditor can only sell the debtor's joint interest in the property.

²¹ According to the 2015 Operating Budget Briefing Note on Unpaid Provincial Offences Fines *"garnishment is generally only effective when the City has a significant amount of information about the POA fine debtor. Unfortunately, it is not often the case that the City has the necessary information to pursue garnishment."*

²² According to the 2015 Operating Budget Briefing Note on Unpaid Provincial Offences Fines, the City's *"experience is that debtors often do not show up to the examination and there are limited tools to address that situation. Currently, examinations in aid of execution are not regularly used."*

After our audit identified that Legal Services' requests for CODs were not being fulfilled, Court Services filed a portion of the requested CODs. At the end of April 2018, Court Services filed 72 CODs in Superior Court for approximately \$11.8 million in defaulted fines. It is important for Court Services to file CODs promptly when requested by Legal Services, because property ownership can change quickly.

Prioritizing Accounts Where CODs are Requested

Court Services is not selecting or prioritizing the right accounts for civil enforcement

In addition to not following up on filing the requested CODs, Court Services is not prioritizing the right accounts for a COD. Staff work through, in alphabetical order, an outdated list over 500,000 entries long, to select and file CODs. Additionally, this list only contains accounts under \$25,000. Accounts greater than \$25,000 are reviewed separately by Legal Services.

Many of the CODs filed in 2017 were for debtors who did not own property or had a low balance outstanding. In particular, 74 per cent of the 674 CODs filed at Small Claims Court in 2017 were for accounts with less than \$5,000 owing, with 152 (23 per cent) CODs filed for accounts with less than \$1,000 overdue.

Accompanying enforcement action has not been taken on the majority of CODs filed

Approximately 3,500 CODs were filed by Court Services from 2014 through June 2017. Legal Services advised that while legal demand letters were sent out, the majority did not result in a writ, because the debtor did not own property.

Standard operating procedures for filing CODs should be enhanced

Unless the debtor is known to own property, it is not cost effective to file CODs for cases with low balances because of the staff time required as well as the processing fees charged by Small Claims Court.

Court Services should enhance its standard operating procedures to ensure it includes clear criteria for prioritizing the CODs to be filed. Procedures can also be improved to address requirements for oversight and supervisory review of CODs and tracking of the status of CODs requested by Legal Services.

City should address restrictions on its ability to efficiently file CODs on high-dollar accounts

CODs for debtors with high balances are filed at the Superior Court. It is in the City's interest to prioritize these accounts; however, management advised that Superior Court filings are significantly more time consuming because staff must wait in line to file CODs and they are only allowed to file three per visit.

The City, and all municipal court administrators, would benefit if special arrangements could be made with the Superior Court to process and file CODs in bulk in an efficient and effective manner.

- Recommendations:**
- 12. City Council request the Director, Court Services, in consultation with the City Solicitor, to establish and implement a protocol or criteria for prioritizing accounts that would benefit the most from filing certificates of default (CODs).**
 - 13. City Council request the City Manager, in consultation with the City Solicitor and Director, Court Services, to make a request to the provincial Superior Courts of Justice to improve or expedite processes for filing certificates of default (CODs) related to defaulted Provincial Offences Act fines.**

B.1.4. Adding Debts to Property Tax Rolls

Municipalities can add defaulted fines to the property tax roll

Municipalities have been allowed to add defaulted POA fines to the municipal tax roll since the end of 2009. Once added, POA fines incur interest at 1.25 per cent per month and various other fees, which can quickly add up. Legislation requires that any tax payments received be applied to the oldest amount outstanding including POA fines. Once a tax roll is in arrears for three years, the property may be registered for tax sale.

The 2015 Operating Budget Briefing Note on Unpaid Provincial Offences Fines indicates:

"The City identifies potential additions to the tax roll through its internally developed searching programs. The City's current strategy utilizes monthly searches that identify freshly defaulted POA fines with a total balance of more than \$100. Legal Services is provided the data and verifies ownership and authority to add to the tax roll. Appropriate fines are then added to the tax roll of properties."

Collection rates are high where defaulted fines have successfully been added to tax rolls

From June 2010 to December 2017, the City added approximately \$4.9 million in defaulted POA fines to property tax rolls. As of February 25, 2018, 92 per cent of the fines added to tax rolls have been collected. Interest and fees accounted for an additional \$550,000 in revenue. Clearly, when Court Services is able to provide the necessary data to Legal Services to be able to efficiently add accounts to the property tax roll, this is an effective mechanism for collecting on defaulted fines.

The City should continue to advocate for fines to be added to tax rolls where property is jointly owned

Current legislation only permits the fine amount to be added to the tax bill if the debtor is the sole owner of property. This sanction cannot be used for joint ownership. Recently, the Ontario Municipal Tax and Revenue Association requested the Province amend legislation to allow defaulted fines to be added to property tax rolls in cases of joint ownership.

Property data matching can also enable greater use of writs to secure payment

The 2015 Operating Budget Briefing Note indicates:

"The Court and Legal Services Divisions will be increasing efforts to locate property solely or jointly owned by individuals who owe fines and will make greater use of Writs to secure payment... While more labour intensive than using the property tax roll sanction, this will allow for the collection of fines that may not otherwise occur."

We identified 42,000 cases with \$9 million in default that may be eligible to be added to the tax roll or where a writ can be secured

While Court Services performs data matching to a number of databases, we found multiple cases where the analytics performed did not identify potential owners with outstanding fines greater than \$100 that could be added to the tax roll. We decided to test Court Services' results to verify that all offences that should be sent to Legal Services for possible addition to the tax roll were, in fact, sent.

We compared a debtor's exact²³ name and date of birth to ownership records for properties in the City's property tax database and Municipal Property Assessment Corporation data. We found approximately 8,380 unique debtors, (42,350 cases, \$9 million), with cumulative debts of at least \$100, where the City can potentially add the defaulted fines to a property tax roll and/or file a COD/writ of seizure and sale. The results are summarized in Table 3.

Table 3: Analysis of Potential Debtors with Fines Who May Solely or Jointly Own Properties Within Ontario

Number of offences	Value of fines	Debtor information appears to match offence information	Current Action
7,300 offences	\$1,520,800	Debtor may be the sole owner of property	Review being undertaken by Legal Services to take appropriate action
35,050 offences	\$7,479,200	Debtor may jointly own property	

Court Services can improve the quality of its data analysis to better support reviews by Legal Services

We noted that approximately 20 per cent of offences identified were captured by Court Services. The audit procedures have confirmed that Court Services needs to improve the completeness, quality, and frequency of the data analysis provided to Legal Services so that Legal Services can review and add properties to property tax rolls in an effective manner.

We noted that part of the current review process includes Legal Services staff manually comparing debtors against the province's electronic land registry system. The registry is exclusively owned and operated by a third party vendor. If the City is able to gain access to reports or data from the system, it can then leverage data analytics in its review process. This will improve the efficiency and ability to match outstanding fines to property holdings, both within the City and across the province.

²³ Our analysis was limited to exact matches of name and date of birth. Allowing for slight variations and/or misspellings in the names recorded in ICON may yield additional matches.

Potential Savings

Based on the potential property matches we identified during our audit, conservatively, if the City recovers 50 per cent of fines owing by adding them to the tax roll or by securing writs, we estimate that the City stands to collect over \$4.5 million in overdue fines. Moreover, any fines that remain unpaid after adding them to the tax roll or filing a COD would be subject to applicable interest charges. The estimate of the amount of interest the City may have lost out on by not adding the fines to the tax roll or obtaining CODs has yet to be determined.

Expand Inter-Municipal Tax Roll Program

Outstanding POA fines can be added to property tax rolls in other jurisdictions

In 2011, the Ontario Municipal Tax and Revenue Association created the joint inter-municipal tax roll pilot project. This program allows outstanding POA fines originating in one jurisdiction to be added to the tax roll in another, thus improving the chances of collection.

On June 11, 2013, City Council authorized the Treasurer to enter into an inter-municipal agreement with the Cities of Ottawa, Mississauga, Belleville, Kawartha Lakes and County of Hastings. Legal Services advised that York Region has recently expressed interest in joining as well.

The inter-municipal tax roll program needs to move forward

Since then the City has not entered into similar agreements with other Ontario municipalities.

From 2014 to 2015, a total of 85 fines were added to tax rolls in two participating municipalities. There have been no additional placements since then. As of June 30, 2017, \$75,000 (66 per cent) has been collected from \$114,000 in fines added to tax rolls.

There is a large number of debtors that reside in other jurisdictions within Ontario

There is a large number of debtors with fines in default who reside outside of Toronto. For example:

Municipality	Number of Cases	Total Fines in Default
Brampton	26,000	\$14.0 million
Ajax	9,500	\$10.0 million
Markham	18,000	\$6.7 million
Richmond Hill	12,000	\$4.6 million

Additional inter-municipal tax roll agreements should be pursued

We believe there are benefits in pursuing new agreements with other jurisdictions. To do so, there is a need for greater stakeholder engagement to champion this initiative and commit to regular matching of corresponding tax rolls.

- Recommendations:**
- 14. City Council request the Director, Court Services, in consultation with the Revenue Services Division and Legal Services Division, to improve processes for reviewing debtor information against various property databases, to maximize opportunities to add defaulted fines to the property tax roll for collection purposes.**
 - 15. City Council request the City Manager, in consultation with the City Solicitor, to request that the Province assist the City in accessing information in the Province's electronic land records database, in order to improve the ability to match City debtors (including those with defaulted Provincial Offences Act fines) with the owners of real property in Ontario.**
 - 16. City Council request the City Manager, in consultation with the City Solicitor and Director, Court Services, to make a request to the Province for legislative changes to enable collection of defaulted fines through the property tax rolls for jointly owned properties.**
 - 17. City Council request the Treasurer, in consultation with the Director, Court Services, to assess the results of the pilot inter-municipal tax roll program. If the project is deemed to be successful in enforcing the consequence of POA offenses:**
 - a. The City undertake to enter into additional agreements with other Ontario municipalities**
 - b. The City undertake to transfer and accept other defaulted fines to and from other municipal partners to be added to the relevant municipal property tax rolls for collection.**

B.2. Pursuing Additional Channels for Debt Collection

Toolkit for collection continues to be enhanced

In association with other municipal court administrators, Court Services and Legal Services, on an ongoing basis, advocate for legislative and other changes. This has resulted in improvements to the suite of collection tools. Some examples include:

- In 2009, the City of Toronto Act was amended to allow defaulted POA fines to be added to the debtor's property tax roll
- In 2013, the City entered into inter-municipal agreements to add outstanding POA fines to tax rolls in other participating jurisdictions
- In 2015, the Making Ontario's Roads Safer Act was passed, which allowed broader use of plate denial for defaulted POA fines
- In 2017, the Provincial Offences Act was amended to mandate that payment be applied to defaulted fines in order from oldest to newest (not yet in effect).

In this section, we discuss opportunities for the City to pursue additional channels to support its enforcement efforts.

B.2.1. Canada Revenue Agency Refund Set-Off Program

Defaulted fines can be collected through the CRA set-off programs

The Canada Revenue Agency's (CRA) set-off programs enable tax refunds and eligible credits to be applied against debts owed to the Crown.

CRA's set-off programs would provide the City with an avenue of last resort to collect unpaid fines

Participating in the programs provides the City with an avenue of last resort to collect unpaid fines. After City collection efforts have been made, uncollectible POA fines can be transmitted to the CRA to be set-off against tax refunds and credits. Amounts will continue to be redirected until the debt has been paid in full.

Auditor General of Ontario recommended refund set-off 10 years ago

In a 2008 audit of the Ministry of Attorney General – Court Services, the Auditor General of Ontario indicated that:

"We noted that most provinces, including Ontario, have agreements with the Canada Revenue Agency to withhold federal income tax and GST payments from people with overdue Crown debt, which we believe should also be considered to collect outstanding judicially imposed fines."

Many provinces use the CRA set-off programs

It is a matter of public record that many provinces currently have agreements in place to add debtors with unpaid provincial court fines to the CRA programs (including British Columbia, Alberta, Saskatchewan, New Brunswick, Newfoundland & Labrador).

The fine must be a debt due to the Crown

To be eligible for the programs, the debt must be classified as debt due to the Crown. The City's Legal Services Division confirms that POA defaulted fines are still considered to be debt due to the Crown, even though the City has been delegated the authority to collect these debts. As part of the process for evaluating requests to participate in the programs, the CRA's legal counsel will also review the status of debts to ensure that the Agency is satisfied that they are debts due to the Crown.

Collection management system is needed

Before participating, it is necessary for the City to invest in a proper default fine collection management system to facilitate the management and transmission of files to the CRA. While the City already transmits defaulted fine information to private collection agencies, approval by the Ontario Court of Justice to transmit relevant debtor information to the CRA for set-off purposes should still be sought.

Province and CRA are open to consultation on assisting the City to leverage the set-off programs

We acknowledge the City's previous efforts to try to set up a program. We are also informed by the Ministry of Finance that in 2014-15, the Ontario Ministries of Finance and Attorney General and the CRA assessed the viability of a Province-led use of the program to assist the municipalities. That model assumed the Province would bear all the costs to develop any systems needed as well as staff resources to manage and co-ordinate the program's use with its municipal partners. It was concluded there would be challenges with proceeding with a model that was province-led.

The Ministry of Finance informs us that it understands there can be models which would not have any fiscal impacts for the Province and it is open to considering new options to move forward.

City would need a three-way MOU with the Province and CRA to participate in the set-off programs

Prior to participating in the CRA refund set-off programs, a Memorandum of Understanding (MOU) with the CRA will be required, either through a new MOU or an addition to the existing MOU between the Province and the CRA.

All parties agree that more work to clarify the roles and processes is needed to ensure it works effectively for all involved. The Ministry of Finance advised that before the province makes any comments relating to next steps, it would need to confirm the legislative, financial, and privacy implications of any proposed model.

Recommendation:

- 18. City Council request the City Manager to:**
 - a. Undertake the necessary consultation with the relevant provincial Ministries to evaluate whether the City's defaulted Provincial Offences Act fines can be added to the Canada Revenue Agency Set-Off Programs; if so,**
 - b. Submit a request to participate in the Programs.**

B.2.2. Requiring Payment of Fines as a Condition for Business Licences

Some individuals or companies with defaulted fines may have business licences issued by the City. This presents an opportunity to remind them of their outstanding fines and to collect payment.

Some debtors have an active business licence

For example, there are some debtors who hold an active business licence issued by the Municipal Licensing & Standards Division (MLS). Court Services has an opportunity to improve collections, by providing an opportunity for applicants to pay the fine at time of licensing. MLS does not currently have specific authority to collect defaulted POA fines on behalf of the City.

MLS will refuse a business licence if there are overdue fines for bylaw related offences

MLS management advised that when applicants attempt to renew or obtain a licence, staff will review the licensee's history and are required to refuse an application or renewal for a licence if:

- there are overdue fines for related bylaw offences, or
- there are enough convictions within a certain period of time to cause concerns about their conduct.

The Licensing Tribunal can impose conditions for a licence if the conduct of the licensee endangers the health and safety of the public

The Toronto Licensing Tribunal has the authority to place conditions on a business in order to obtain or renew a licence. The City may refer matters to the Tribunal, if the business is not conducted in accordance with the law and with integrity, or may endanger the health and safety of the public.

There are businesses with active licences who have overdue fines for vehicle-based offences

Highway Traffic Act (HTA) offences are considered as part of the licence issuance and renewal process. However, HTA-related defaulted fines do not currently form part of the criteria for refusal (unlike overdue bylaw fines). MLS staff do not currently have access to outstanding HTA fine information in the normal course of business. We identified multiple businesses with an active business licence that have unpaid fines in default related to HTA driving-based offences. Examples include:

- A garage with nearly \$3,000 in defaulted fines for offences including permitting an unlicensed person to drive a vehicle, driving a vehicle with a major defect and having an overweight vehicle
- An ice cream truck with over \$1,500 in defaulted fines for offences including operating an unsafe vehicle and failing to ensure that performance standards are met
- A food truck with over \$1,000 in defaulted fines for offences including driving an overweight vehicle
- A tow truck driver with over \$500 in defaulted fines for offences including carrying of an insecure load.

There are eating establishments with active licences who have overdue fines for Public Health violations

There are businesses with defaulted fines stemming from food premises safety offences. These offences that go unpaid should be considered as part of the licence issuance and renewal process for eating establishments.

In our review, we identified multiple eating establishments with unpaid fines in default. These include:

- A bakery with six health violations including failing to protect food from contamination. Defaulted fines totalling nearly \$2,000 have not been paid
- A café with two fines in default totalling nearly \$400 for failing to provide a hygienic environment for food preparation, storage and disposal
- A pizza store with a defaulted fine of around \$100 for failing to arrange their furniture/equipment/appliances to allow for cleaning and sanitation.

Divisions within the City should work together to improve opportunities to collect POA fines, which will in turn reduce risks to the public because enforcing fines is the primary deterrent to re-offending.

Recommendations:

- 19. City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor and the Director, Court Services, as well as the Ontario Ministry of the Attorney General, to discuss opportunities to enable Licensing unit staff to request and collect payment for defaulted fines from any debtor applying for or renewing a business licence.**
- 20. City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, to evaluate whether requiring payment of all defaulted Provincial Offences Act fines can serve as a condition for issuing or renewing municipal licences.**

B.2.3. Promoting Early Payment of Fines

Provide Incentives for Early Fine Payment

Legislative change may be needed to provide incentives to support sentence fulfillment

The Ontario Association of Police Services Boards 2011 White Paper highlights that:

"Once a fine is imposed, there is no room for negotiation and thus no incentive for anyone to pay early (or in many cases, even on time). With no prospect of getting a better deal, many simply choose to ignore the fine or draw out the payment as long as they can."

The Association recommended that discounts for early fine payment be initiated as an incentive. This would require a change to applicable legislation.

For example, the Province of British Columbia allows for a deduction from the fine amount for paying a ticket quickly. More specifically, tickets for offences under the Motor Vehicle Act or Regulations qualify for a \$25 deduction if the following conditions are met:

- The ticket is paid within 30 days of the date it was issued
- The ticketed amount is greater than \$58
- The entire amount of the ticket is paid (partial payments do not qualify for a deduction)
- The ticket has not been disputed.

Interest charges would be an ongoing and increasing incentive to pay fines promptly

Another approach to promoting early payment of fines is to institute interest charges once fines go into default. Interest charges differ from the one-time \$40 late fee because they provide an incentive for the debtor to pay promptly to avoid interest charges from building up.

Currently, interest is only applied where defaulted fines are added to the debtor's property tax roll and continue to be unpaid and where civil enforcement is pursued. For the balance of delinquent accounts, no interest is charged. In contrast, for other City debts²⁴ late payment fees of 15 per cent per year or 1.25 per cent per month are applied to outstanding receivable balances on a monthly basis. The City should seek to add interest to all defaulted fines, requesting the Ministry of Attorney General for legislative changes, where necessary.

Maintain Regular Contact with the Debtor

Ongoing follow-up and reminders reinforce the seriousness of a POA fine

The Ontario Association of Police Services Boards' 2011 White Paper also found that:

"Contact in regards to a ticket is sporadic and can be confusing; administrative barriers may quickly deter an individual with only a slight propensity to pay. Following up with a ticketed individual will remind them of their debt and reinforce the seriousness of a POA fine. Stakeholders urge governments to be more proactive in following up on unpaid fines."

²⁴ Unless otherwise specified in an existing agreement, in legislation, or in a City bylaw

Court Services should maximize opportunities to collect fines before they go into default and shortly after default. Key to this is to contact offenders as soon as possible after a sentence is handed down.

Many will not pay if they are not asked

For example, the Ontario Association of Police Services Boards 2011 White Paper highlighted:

"In early 2011, the City of North Bay hired a collections clerk and began placing reminder calls to people recently fined. In about six weeks, preliminary data indicates that the city was able to collect about \$40,000 more than it had during the same period the previous year. This type of follow-up should occur as a matter of course. Many people will not pay if they are not asked or otherwise incited."

Other jurisdictions have implemented practices to promote prompt payment

Actions other jurisdictions have taken to promote prompt payment include:

- Establishing early contact with offenders to encourage early payment by offering to help in arranging payment or establishing payment plans
- Sending courtesy letters encouraging payment, and emphasizing that it becomes significantly more expensive to pay a fine past the due date once the collection process begins
- Sending reminder notices once fines go into default
- Having staff present in or near courtrooms who can work with offenders immediately to make payment arrangements the day a fine is imposed.

Court Services mails out a Notice of Fine and Due Date after sentencing (prior to the due date). Court Services does not otherwise send any reminder correspondence or perform dunning when the fine goes into default.²⁵

²⁵ For City divisions that follow Accounting Services' Corporate Accounts Receivable Procedures, dunning letters are sent out for unpaid past due debts. The dunning process continues every 30 days until the amounts owing is settled. Collection activities must continue throughout the dunning process.

Court Services has not established a protocol for methodical and consistent dunning

The next notice that most debtors will receive is from a private collection agency after the account has been assigned, unless Legal Services has mailed a legal demand notice when a COD has been filed. Since accounts are not promptly assigned to collection agencies, it may be several months before a debtor is notified that their account is in default. There are no requirements for a consistent dunning process in the contracts with the private collection agencies and Court Services does not monitor whether dunning occurs.

Advancements in the way the collection industry interacts with debtors

To support more efficient collections, Court Services has made technological changes for defaulted fines fairly recently, including dialer services, document imaging, and automated financial reporting. These changes have been operating in the collection industry for many years.

Moreover, interactions with debtors have evolved from historically relying on paper correspondence (mail), inbound/outbound call centers, and walk-in customer service offices. The industry has moved on to email/paperless/online correspondence, unattended messaging, interactive voice response payment applications, and web portal interactions. Early adopters in the collections industry are quickly moving towards SMS/text messaging, interactive online chat, smart phone applications for payment, and third-party (cloud-based) applications.

Recommendations:

- 21. City Council request the City Manager to request that the Province consider whether incentives for early fine payment can and ought to be established, such as discounts to fine amounts where a defendant does not dispute a ticket and submits payment promptly or interest charges applied to fines that go into default.**
- 22. City Council request the Director, Court Services, to revise the Division's practices for maintaining contact with debtors, where necessary, in an effort to be more proactive in following up on unpaid fines. This should include implementing requirements for a consistent dunning process in the contracts with the private collection agencies.**

C. SET OUT A STRATEGIC ACTION PLAN BASED ON DEBT PROFILE

C.1. Establishing a Plan of Action for the Debt That Should Be Actively Pursued

Develop an effective plan of action to improve collection and reduce delinquency

Court Services needs to strategically manage the portion of the \$577 million in defaulted Provincial Offences Act (POA) fines that it considers to be collectible and prioritize its collection efforts where its time and resources can be best used.

The profile of the debt should drive the collection approach

The first step to developing an effective plan of action to improve collection and reduce delinquency is to create a profile of the defaulted fines that the Division intends to actively pursue. The profile of the debt should strategically drive collection approaches.

Collection industry uses data analytics to determine the best collection approach for accounts

The collection industry is using data analytics to determine the best collection approach for accounts, including what type of contact method to use, at what point in the process that contact should occur, and how long an account should be worked. This allows staff resources to focus on the highest priority accounts with the most appropriate action.

Even without complex data analytics, Court Services can prepare basic analysis of the profile of the debt that remains in default. Analysis of the debt based on: type of offence; age of the debt; size of the debt; quality of the debtor; quality of the information available; and other risk factors impacting the collectibility of the debt; should be considered when Court Services determines the priority, specific collection tools and optimal approach for pursuing the debt.

Court Services should develop a plan to reduce outstanding debts

Once the profile of the debt that remains in default has been analyzed, the Division can create a formal plan of action that sets out a cost-effective, multi-streamed, multi-channeled collection approach that takes into account the debt profile, collection tools available, and collectibility of the fine, with appropriate strategies for each stream.

The plan should include specific objectives and performance targets to improve collections and reduce delinquency – which support a strategic goal to limit the number and value of defaulted POA fines.

Court Services should enhance standard operating procedures and ensure staff adhere to them

In turn, standard operating procedures for the day-to-day handling of cases should be updated. We found that these procedures did not always provide sufficient guidance for staff and/or were not consistently adhered to. Procedures for assigning fines to collection agencies, filing certificates of defaults, addition of fines to property tax rolls, cases for deceased persons, and write-offs need improving.

Recommendations:

- 23. City Council request the Director, Court Services, to explore the use of predictive data modelling and decision analytics in order to optimize collections and resource allocation based on the debt profile.**
- 24. City Council request the Director, Court Services, to develop a formal plan of action that sets out a cost-effective, multi-streamed approach to collect on defaulted fines that takes into account the debt profile and ensure that the plan is methodically and consistently applied.**

C.2. Identifying Debts Where Collection is Unlikely or Impractical

Nearly \$155 million in fines are not actively pursued

Another key step to developing an effective plan of action to improve collection and reduce delinquency is to have a clear picture of what is actually collectible.

Management advised that the \$577 million in default, includes several types of debt where collection is unlikely or impractical. This includes extremely old fines, fines related to deceased persons or bankrupt organizations, and those where the debtor cannot be identified from the information available on ICON. These amount to approximately \$155 million that Court Services has stopped actively pursuing.

There are likely other cases where active collection efforts should no longer be pursued

The \$155 million identified may not capture the full magnitude to which active collection efforts should no longer be pursued. For example, Court Services' data identified only nine cases of confirmed bankruptcies which appears low. In addition, there are approximately 4,500 debtors (12,000 cases, \$9.7 million) purported to be deceased according to MTO records that, according to Court Services, do not appear to be reflected in ICON.

Collection industry uses data analytics to predict accounts with a very low probability of collection

Court Services should implement a systematic process for identifying or confirming cases where collection is unlikely or impractical, leveraging data matching where possible, so that resources will no longer be invested towards actively pursuing these cases. The collection industry is leveraging decision analytics and statistical modelling to predict whether taking action on an account is an efficient use of time and resources, or whether the account will self-cure or have a very low probability of collection.

To comply with the City's policy, Court Services should be writing off fines considered uncollectible

Where fines are no longer actively pursued, Court Services should consider removing or "writing-off"²⁶ those fines from its inventory of outstanding receivables, in accordance with the City's 2008 "Write-Off Policy for Fines under the Provincial Offences Act Deemed Uncollectible". Court Services has not written off any outstanding POA fines since the 2002 provincial transfer.

No accounts have ever been written off

A 2014 audit by the Ministry of the Attorney General noted the lack of write-offs, specifically for POA fines, and recommended the City:

"review its accounts receivable to identify accounts to be deemed as uncollectible for write-off".

Court Services lacks the resources needed to locate the documentation to support write offs

Court Services advised that the Division does not write off uncollectible cases because the resources required to write-off cases in ICON would not be recoverable and serve no value to the City.

Writing off thousands of cases, would require Court Services to locate the necessary supporting documentation for each case including:

- Copy of the original charging document
- Record of additional costs and fees included in the outstanding amount
- Documentation as to all collection activities undertaken
- Reason the write-off is recommended.

²⁶ In the context of the City's defaulted POA fines, "write-off" means removing the amount owing from the Provincial ICON system. However, POA fines are considered debts to the Crown that are owed in perpetuity and are never forgiven.

In the absence of a collection management system that can track all collection activities undertaken for the over 2 million cases with fines in default, it can be difficult and time consuming for Court Services to be able to identify all collection activities undertaken for a given case. Furthermore, it can be difficult to track accounts written off but not extinguished, in the event they can be revived at some point in the future if the probability of collection improves.

The City continues to receive payments on defaulted fines typically considered uncollectible

Management also advised that removing fines from ICON effectively alleviates the debt, as the mechanism for tracking and securing payment is eliminated. We were advised that the City continues to receive payments from fines typically considered "uncollectible". For example, in 2017, Court Services collected \$11,500 in fines dating back 30 years or more.

Report to City Council where active collection has ceased

If this is the approach the City intends to take, the "Write-Off Policy for Fines under the Provincial Offences Act Deemed Uncollectible" should be updated accordingly. Regardless, the Court Services should report transparently to City Council and its other stakeholders on the number of cases and related fines in default where it has ceased active collection efforts.

Recommendations:

- 25. City Council request the Director, Court Services, to establish a systematic process for determining when active collection efforts should cease and to ensure information systems are updated to accurately reflect the Provincial Offences Act fines in default where active collection efforts are no longer pursued.**

26. **City Council request the Director, Court Services, to:**
 - a. **Review the "Write-Off Policy for Fines under the Provincial Offences Act Deemed Uncollectible" and submit to Council proposed revisions to the Policy to reflect existing practices**
 - b. **Implement processes to ensure compliance with the "Write-Off Policy for Fines under the Provincial Offences Act Deemed Uncollectible".**

C.3. Measuring and Reporting on Collection Outcomes

Court Services' Annual Report to the Ministry of the Attorney General does not include information about collection results

While Court Services is required to report annually to the Ministry of the Attorney General, the Annual Report provides virtually no information about collection results. The Ontario Association of Police Services Boards highlighted in 2011 the need for improved:

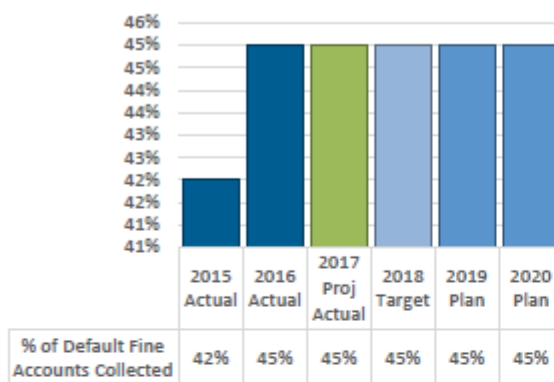
"... quality and accessibility of POA fine data analysis at the aggregate level, so stakeholders (including government ministries) can make informed decisions regarding fine collection challenges, expectations, and obstacles."

Performance reporting to City Council is also limited

Court Services has included certain performance metrics in their Operating Budget Notes on the number of fines collected within first year of default and percentage of default fine dollars collected within the first year of default (refer to Figure 10). However, these metrics do not paint a comprehensive picture of defaulted fines or whether Court Services' strategies to curb the growth in overdue fines is effective.

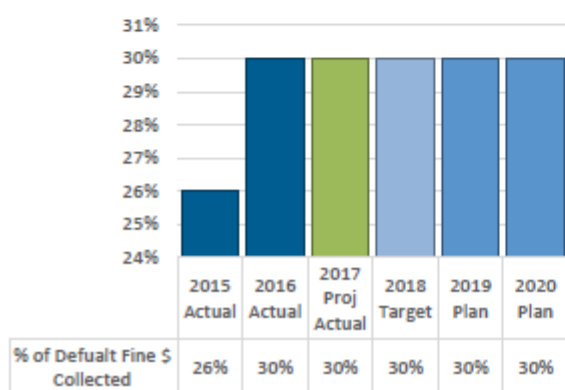
Figure 10: Performance Measures Included in Court Services 2018 Operating Budget Notes

% of Default Fines Collected within the 1st Year of Default



- Default fine collections are projected to increase from 42% in 2015 to 45% in 2018 and are projected to stay flat through 2019 and 2020.
- Current projections reflect improved collection procedures that include increased reliance on collection agencies and improved collection techniques, including electronic phone applications.

% of Default Fine \$ Collected within 1st Year of Default



- The 2017 projections for the dollar value of fines collected in the 1st year of default has increased from 26% in 2015 to a projection of 30% in 2017, with 2018 and future years remaining flat at 30%.

A benchmarking of the POA Defaulted Fine Collection Rate is available through the Municipal Benchmarking Network Canada. The 2016 benchmarking is included in Figure 11. Toronto's performance continues to be amongst the lowest of all reported municipalities.

Court Services advised that the nominal indicators in the benchmarking do not reflect a fair basis for comparing between municipalities because of the:

- varied interpretation of the variables used for calculating collection rate across municipalities
- volume and mix of charges of each municipality
- varying compliance rate with court ordered sentences across municipalities.

Court Services was unable to provide any other benchmarking source. Municipal court administrators can consider harmonizing their approach to benchmarking and adopt uniform standards for reporting. It may also be helpful to have more detailed benchmarks that take into account the profile of defaulted fines, including type of offence, size, and age.

Figure 11: Defaulted Fine Collection Rate from 2016 MBNCanada Performance Measurement Report



Source: PCRT310 (Efficiency)

Source: Municipal Benchmarking Network Canada, 2016 MBNCanada Performance Measurement Report, Fig. 25.4 Defaulted Collection Rate, http://mbncanada.ca/app/uploads/2017/11/MBNCanada_2016_Performance_Measurement_Report.pdf

Improving rates of collection can provide a much needed source of funding for the City

Management has advised they do not report any other operating or performance related information to City Council, as there have been no such requests to do so.

Enhanced reporting to City Council will increase Court Services' accountability for the effectiveness of its collection efforts. This can help to show that the City is making every reasonable effort to collect court-ordered fines in order to ensure that justice is well served.

At the same time, it allows the Division to demonstrate the financial impacts of collection on the City as a whole. The higher the rate of collections of fines in default, the more money the City will have available to meet demands for programs and services.

Performance indicators and targets for reducing delinquencies and improving collections should be measured and benchmarked

Improved performance reporting and accountability can enable the City Manager, City Council, and other stakeholders to better evaluate the productivity, performance, account management, and strategic oversight of collections.

Examples of performance indicators and targets Court Services could use and compare with other jurisdictions may include:

- Delinquency rate and delinquent collections rate
- Collection rates by private collection agencies
- Dollars collected through various tools
- Average time to payment
- Total number and dollar value of accounts where active collection efforts are no longer pursued (where collection is unlikely or impractical).

Recommendations:

- 27. City Council request the Director, Court Services, to establish clearly defined benchmarks and performance measures for the collection of Provincial Offences Act fines in default, both for itself and for individual private collection agencies that it contracts. The outcomes should be tracked and evaluated against established benchmarks.**

- 28. City Council request the Director, Court Services, to report annually to City Council, or the applicable standing committee, on defaulted Provincial Offences Act fines including:**
- a. Year-to-year comparisons of the delinquency rate, defaulted fine collection rate, and number and dollar value of defaulted fines where collection is being actively pursued and where active collection efforts has ceased**
 - b. Aging of defaulted fines by type of offence and size of the debt**
 - c. The results of its efforts to collect defaulted fines during the year compared to objectives or recovery targets**
 - d. The remaining balance of unpaid fines.**

D. IMPORTANCE OF CITY-WIDE COORDINATION OF DELINQUENT RECEIVABLES AND REVENUE COLLECTION MANAGEMENT

Those who owe debts to the City should pay

Given that the City is faced with constant pressure to find funding to provide crucial programs and services, including shelters and child care, it is important that those who owe debts actually pay them. A major portion of money owed is paid in a timely manner and never becomes "overdue".

The issues in this report are not new

Although Provincial Offences Act (POA) fines are somewhat different than other debts, the issues in this report are not new. In recent audits, we have seen that there are still large amounts owed to the City which are not being collected, and in some other audits, overdue receivables are not being recorded.

Recurring themes related to collection of overdue amounts owed to the City

Common themes across our past audits of revenues and receivables collection practices are:

- Challenges obtaining a clear and comprehensive picture of how much is actually owed to the City and the aging of the debts owed to the City
- Collection tools available can be used more consistently and effectively (e.g., collection agencies, transfer to property tax rolls, civil enforcement, etc.)
- Data is not always complete
 - Histories of accounts are limited and follow-up activity is not always documented
 - Information systems and data tracking is insufficient for management to be able to effectively manage outstanding accounts
- Accounts receivable are not managed consistently throughout the City. There is no single point of authority to ensure a City-wide program or standards exists to consistently manage debts
 - Routine supervisory review of accounts receivable does not take place
 - There are a number of accounts with nominal balances outstanding for a long period of time which have not been written off
 - There is no process in place to provide information on long-outstanding accounts where no recent activity has occurred or where active collection has ceased
- Performance targets and measures do not exist or are insufficient to assist management in monitoring the effectiveness of collection efforts.

A summary of key observations from prior reports is included in Table 4.

Table 4: Summary of Audits that Include Findings on Receivables and Collections Management

Audit Report	Report Year	Related observations
Economic Development, Culture and Tourism Department – Review of Receivables Relating to Parks and Recreation Operations and the Review of Revenue and Cash Controls Relating to the Parks and Recreation Division, North and South Districts	2004	This audit identified there was <u>minimal action taken to collect</u> overdue accounts, insufficient ongoing supervisory review, and the <u>absence of performance targets</u> to evaluate and improve collections. The audit suggested <u>prioritizing large unpaid balances</u> and <u>using tools such as collection agencies and interest charges</u> on unpaid amounts to improve collections.
Toronto Social Services – Recovery of Social Assistance Overpayments	2005	This audit noted insufficient documentation of customer account follow-up activity, inadequate supervisory review, <u>large unpaid balances not being prioritized</u> , and <u>unreliable information systems</u> to support effective management of unpaid amounts. Outstanding overpayments owed to the City were not recorded in the City's financial information system.
Review of the Administration of Leases on City-owned Property	2006	This audit identified that receivables in the financial system were inaccurate because amounts owing to the City were not always billed. It was also noted that interest was not always charged on unpaid amounts, and <u>collection efforts were minimal</u> or inconsistent.
Internal Audit of Court Services	2007	The City's Internal Audit Division recommended a new collections management <u>system to effectively track and manage unpaid fines</u> , and a process to ensure <u>more frequent transfer of overdue amounts to collection agencies</u> . Neither are in place.
Protecting Water Quality and Preventing Pollution – Assessing the Effectiveness of the City's Sewer Use By-law	2008	This audit identified that receivables in the financial system were inaccurate because certain customers were either not billed, or billed amounts were based on <u>inaccurate information</u> . The audit also identified that <u>interest was not always charged</u> on overdue amounts.
Controls Over Parking Tags Need Strengthening	2010	This audit noted that <u>collection agencies were not effectively used</u> because of <u>inaccurate debtor information</u> . The audit also identified inadequate supervisory review, insufficient documentation to support account credits, and the <u>need to prioritize collection efforts on large unpaid balances</u> .
Parks, Forestry and Recreation Division – Concession Agreements Review	2010	This audit noted that receivables in the financial system were inaccurate because of untimely billings. The audit also noted that <u>interest on unpaid amounts was not charged</u> , and there was no process to monitor and improve collections.

Audit Report	Report Year	Related observations
Front Yard and Boulevard Parking – Improvements Needed to Enhance Program Effectiveness	2012	This audit identified that available <u>collection tools such as bylaw enforcement or interest and penalties were not effectively</u> used to collect unpaid amounts. Further, accounts write-offs did not comply with Corporate policies.
Review of the Management of the City's Divisional Accounts Receivable	2012	<p>This audit identified the following:</p> <ul style="list-style-type: none"> • the <u>need for a single point of authority</u> to ensure that accounts receivables are managed consistently throughout the City; • inadequate documentation to evidence customer account reviews and follow-up activity; • insufficient supervisory review; • nominal account balances that should have been written off because they were outstanding for a long period of time. • accounts receivable <u>aging was inaccurate</u> and needed manual adjustments; • the City's financial information <u>system was not effectively used</u> to support management's oversight of collections activity; • <u>performance targets were needed</u> to evaluate and improve collections. <p>The audit also recommended that the City Manager evaluate the <u>centralization of collection activities</u> as part of the ongoing shared service review. This recommendation is still outstanding.</p>
Municipal Licensing and Standards, Investigation Services Unit – Efficiencies Through Enhanced Oversight	2013	This audit identified that receivables in the financial system were inaccurate because certain customers were not billed. Further, write-offs were not reported to Council as required.
Water Billing and Collections, Phase One	2016	This audit noted that available <u>collection tools (i.e. property tax roll, collection agencies) were not effectively used</u> due to inadequate information and account tracking. Collection efforts for <u>high-risk accounts were not prioritized</u> . There was no process to monitor and improve collections.
Real Estate Services Division – Restore Focus on Union Station Leasing	2017	This audit identified that receivables in the financial system were inaccurate because account billings were incorrect, and certain customers had not been billed over multiple years.

Auditor General recommended centralization of collections in 2012

The 2012 Auditor General's report, "Review of the Management of the City's Divisional Accounts Receivable", recommended that the City Manager evaluate the centralization of collection activities as part of the ongoing shared services review. Audits and Service Efficiency Studies conducted since then, including the 2012 Drummond Commission Report to the Commission on the Reform of Ontario's Public Services, and the 2012 Sierra Systems Service Efficiency Study, reinforce the need for a dedicated receivables unit.

Recommendation has not been implemented

We were advised through our 2017 follow-up process that the recommendation from the 2012 report has still not been implemented. Management advised that:

"At this time, invoicing and collection efforts remain decentralized across the City, with the exception of Facilities, Clerks and Legal, where receivables are managed by Accounting Services. However, in 2017, ASD will be reviewing invoicing and collection processes across the City, with the goal of enhancing corporate policy and governance, along with standardizing invoicing and collection procedures. The feasibility of centralizing all collections will also be reviewed."

Over \$1 billion in receivables are managed across multiple divisions

The City's accounting records show a total balance of over \$1 billion in accounts receivables at December 31, 2017 as summarized in Table 5. Management and collection of this amount is decentralized over multiple divisions across the City.

Table 5: Summary of Receivables Across the City, as at December 31, 2017 (unaudited)

Division	Outstanding Receivables
Court Services – POA Defaulted Fines	* \$41,726,000
Court Services – POA Fines Collected by other Jurisdictions	\$1,233,000
Real Estate Services	* \$16,741,000
Facilities Management	\$762,000
Revenue Services – Property Taxes	\$253,311,000
Revenue Services – Water Billings	\$205,744,000
Revenue Services – Parking Tags	\$69,047,000
Children's Services	\$56,000
Long-Term Care Homes & Services	\$682,000
Social Development, Finance & Administration	\$3,250,000
Parks Forestry & Recreation - Recreation Program Registration (Class)	\$507,000
Parks Forestry & Recreation (Other)	\$4,731,000
Economic Development & Culture	\$1,486,000

Division	Outstanding Receivables
Toronto Paramedic Services	\$80,000
Toronto Public Health	\$88,000
Municipal Licensing & Standards	\$2,555,000
Toronto Building	\$3,057,000
City Planning	\$31,000
Fire Services	\$2,110,000
Transportation Services	\$14,151,000
Solid Waste Management	\$2,865,000
Toronto Water	\$9,683,000
Engineering & Construction Services	\$159,000
Other Corporate Divisions	\$426,000
Accounting Services/Other Divisions, Employee/Retiree Benefits	\$151,000
Other	\$537,354,000
	Total
	\$1,171,986,000

Notes

(*) Balance is known to not reflect the full amount of the debts owing

In our audit of the Court Services Division, we have again identified issues and gaps in the effectiveness of collecting on overdue accounts.

D.1. Centralizing and Transforming Overdue Collections Management

Stronger leadership, centralized oversight and industry expertise will assist in the City collecting its debts

It is time for the City to consolidate, centralize and transform the collection of overdue accounts. City-wide leadership, centralized oversight and leveraging industry expertise will assist in the City collecting its debts in a cost effective manner.

Transformation is needed to modernize the City's approach to collections

After reviewing industry information, the repetitive recommendations of the Auditor General's past reports, the delay in implementing prior audit recommendations, and the cost and impact on the City, it is clear that transformation is needed to modernize the public service debt collection efforts.

The overall goals of transforming collections should be:

1. maximizing revenue collection
2. minimizing the cost per dollar collected, and
3. enabling effective reporting and performance measurement.

There are different models for centralizing services

Centralization is strongly recommended, but there are different models as to *how* centralization can occur.

The best opportunity to transform is to ask for solutions from industry specialists

While some jurisdictions that have pursued centralized collections have simply provided their accounts to private collection agencies, this model is suboptimal. Our preliminary assessment is that the best opportunity to transform is to ask for solutions from industry specialists.

Industry specialists have capabilities that exceed those of the City

Technological advancements, specializing in collections, and honing of best practices enables private collection firms to collect debts more effectively. By leveraging data analytics and industry knowledge, firms are able to use predictive analysis to collect debts more efficiently.²⁷

The size of the City's outstanding debts will attract proposals for solutions

The size of the City's outstanding receivables when consolidated brings economies of scale that will attract proponents to invest in providing a City-wide delinquent collections solution.

The fact that the *City of Toronto Act, 2006*, allows registered collection agencies to recover its costs directly from debtors self funds this solution, creating more flexibility in the design of an economical collection solution.

Joint Solution (JS) procurement approach to choose the best solution for the City

Taking into account the complexity of the matter, the breadth of the issues and the amount of industry expertise needed, our view is that the City should consider using a Joint Solution (JS) procurement approach to design and choose the best solution for the City.

City could work with private sector to design better solutions

A Joint Solution Request for Proposal (JS-RFP) is a multi-stage, collaborative process where the City would share its collection difficulties and then, as part of the procurement process, leverage private sector expertise to design a range of solutions. Solutions for these kinds of challenges are typically large-scale, long-term and involve some form of business transformation.

²⁷ Key to successful analytics is capturing, updating, integrating and managing collection case-management information.

This model of procurement has been successfully used by other jurisdictions. An overview of the JS-RFP procurement process is contained in a 2008 report by the Auditor General for British Columbia: *An Audit of Joint Solution Procurement and the Revenue Management Project*²⁸. The Auditor General of British Columbia concluded that the Joint Solution Process "substantially met the principles of good practice", and considered this to be a sound approach to a similar procurement problem.

The keys to success under models developed using this approach include:

- understanding the current baselines and identifying the targets
- verifying the business case before approval by City Council
- receiving a clear mandate from City Council to take a corporate-wide view of debt collection and the best model to obtain the best value
- motivating through outcome-based performance measures.

Other jurisdictions have moved towards collections consolidation

Many other jurisdictions have moved towards greater consolidation of collections activities:

- The City of Ottawa's revenue department manages the collection of overdue property taxes and water accounts, as well as collections of defaulted POA fines
- The Province of British Columbia has contracted a service provider to build and operate a revenue management system to support centralized account management, billing, payments processing, tax return processing and collections activity, including provincial fine collection
- The Ontario Public Service has consolidated all non-tax collections with the Ministry of Finance

²⁸ <https://www.bcauditor.com/sites/default/files/publications/2008/report1/report/audit-joint-solution-procurement-and-revenue-management-project.pdf>

- Some U.S. jurisdictions including Ohio, Michigan, Colorado and Louisiana have centralized collection functions for tax and non-tax debts.

A JS-RFP approach is consistent with the strategic sourcing initiatives and supply chain transformation that the Purchasing and Material Management Division is in the process of implementing. What is important is focusing on the City of Toronto's needs while leveraging the strengths and lessons learned from industry specialists and other jurisdictions. The solutions presented through a JS-RFP approach can provide a clear gauge of the potential value of this transformative initiative.

Recommendations:

- 29. City Council request the Treasurer, in consultation with the Chief Transformation Officer, to consider a comprehensive review of Court Services' defaulted fines program as part of an overall review of the City's debt collection activities.**
- 30. City Council request the Treasurer, in coordination with the Chief Purchasing Officer and in consultation with the other program areas responsible for receivables management and debt collection including Court Services, to seek private sector expertise in designing transformative solutions for collecting overdue amounts owing to the City.**

E. OTHER MATTERS

E.1. Recovering the Cost of Collection

Collection Agency Costs are inappropriately added to internal collections

**The City recovers
Collection Agency
Costs from the debtor**

The City fully recovers the cost of using collection agencies by adding the collection agency costs to the balance owed by the debtor. Thus, the direct costs of collections is borne by the debtor.

The City, not the debtor, bears any costs Court Services internally incurs to collect on overdue fines

Court Services also charged collection agency costs totalling approximately \$140,000 on accounts that were not assigned to private agencies for collection. It is our view that, under section 70.1 of the Provincial Offences Act (POA) and section 240 of the *City of Toronto Act, 2006*, CAC cannot be charged on overdue fines that are not collected through a registered collection agency.

While the direct costs of collection agencies are fully recoverable, Court Services' Collection Unit's operating costs are not.

Insufficient late fees

\$40 late fee is too low to recover costs

The Provincial Offences Act imposes a \$40 late fee (up from \$20 prior to 2016) on all defaulted fines. This fixed fee is set by the Province. However, the \$40 fee is considered insufficient to fully recover all other costs Court Services incurs to collect overdue fines. Prior to this change, municipal court managers had advocated for an increase to \$60 in order to achieve full cost recovery.

Court Services collected a total of \$1.25 million in late fees over the period covered by our audit. By comparison, the operating expenses of the Collections Unit over the same period was approximately \$8.2 million.

City should seek to increase administrative fees

Several other jurisdictions have adopted additional administrative fees under Section 391 of the *Municipal Act, 2001*, recognizing that the applicable \$40 late fee under the Provincial Offences Act is insufficient.

Equivalently, section 259 of the *City of Toronto Act, 2006*, gives the City the authority to pass bylaws imposing fees or charges on persons, including costs "incurred by the City or local board (extended definition) related to administration, enforcement and the establishment, acquisition and replacement of capital assets."

Conflicting provisions in provincial legislation should be resolved before proceeding

It should be noted that section 165 of the Provincial Offences Act states, "The municipality shall not collect any other charge for acting under a transfer agreement, except in accordance with section 304 of the *Municipal Act, 2001* or section 240 of the *City of Toronto Act, 2006* or with the Attorney General's advance written consent."

These two pieces of legislation appear to be in conflict regarding the City's authority to charge an administrative collection fee in addition to the \$40 late fee. In order to proceed, this conflict would first need to be addressed or clarified.

City could recover an extra \$2.4 million of its costs with an additional administrative fee, relieving burden on taxpayers

Based on the volume of fines in Toronto, adding a \$20 administrative fee could result in \$2.4 million to offset operating expenses related to collections. This would relieve some of the burden taxpayers are bearing for debtors who do not pay their fines on time and, in turn, allow a higher portion of the actual fines collected to be used towards operating the courts themselves.

Recommendation:

- 31. City Council request the Director, Court Services, in consultation with the City Solicitor, to:**
 - a. Determine whether administrative fees and charges can be applied by the City to defaulted fines, in addition to those prescribed Collection Agency Costs, Late Fee, and other mandated fees and charges under the Provincial Offences Act, in order to more fully recover the cost of collections**
 - b. Make a recommendation to City Council on an administrative fee that can be imposed under section 259 of the *City of Toronto Act, 2006*, or otherwise seek approval from the Ontario Ministry of Attorney General for additional fees under the Provincial Offences Act, as necessary.**

CONCLUSION

30 recommendations to help improve management of defaulted fines collection

This report contains 31 recommendations to help improve the management of defaulted Provincial Offences Act fines. The implementation of these recommendations will assist in developing a more comprehensive collection strategy, allow for more effective use of collection tools, and enhance or create new channels for collection.

Opportunity to transform the management of receivables

Transforming the management of receivables and collection of overdue accounts will allow the City to leverage economies of scale, and acquire expertise in an area that is currently decentralized across the organization.

AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

Audit Work Plan

The Auditor General's 2017 Audit Work Plan included an audit of Court Services Revenue Controls.

Audit Objective

The objective of this audit is to assess the effectiveness and efficiency of the management control framework for collecting defaulted POA fines. This includes evaluating policies and procedures, collections and enforcement processes, financial and performance reporting and information systems for tracking fines, and management of contracted private collection agencies. In particular, we reviewed the following areas:

- Available legislated and civil enforcement collection tools
- Information systems and processes used to manage debt collection
- Receivables and revenue collection framework
- Third Party collection agency agreement, Request for Proposal (RFP)
- Performance measures.

Methodology

Our audit work included the following:

- Review of POA legislation and regulations
- Review of relevant POA court procedures and policy
- Interviews with Court Services and Legal Services staff
- Review of financial and management reports
- Evaluating debt collection strategy and prioritization
- Analysis of accounts receivable, fines collection data and other relevant transaction data
- Review of available collection tools:
 - Driver's licence suspension
 - Plate denial
 - Adding defaulted fines to property tax rolls
 - Use of collection agencies
 - Civil enforcement of fines
- Assessing other options available for debt collection.

Scope	The audit focused on fines in default as at June 30, 2017, or in the case of management of private collection agencies, the period covered by the current contract (2014 to 2017).
Limitation	Much of the statistical financial information in this report on number of cases (offences), fine sentences, defaulted fines, and collections, as well as the related dollar amounts, originated from the ICON system. In certain cases, we were unable to validate statistics provided by Court Services to reports generated from ICON.
Compliance with generally accepted government auditing standards	We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EXHIBIT 1: Glossary of Terms

(Definitions listed are specific to this report)

Term	Definition
Account (defaulted fines)	A person or business with outstanding Provincial Offences Act fines. One account may have multiple cases outstanding.
Authorized Requester Information Services (ARIS)	The Ministry of Transportation's system for authorized users to access its driver and vehicles database.
Case (defaulted fines)	A single or group of fines relating to a single incident.
Certificate of Default	A court judgment that provides a binding legal status to the debt, which enables the City to pursue further civil enforcement.
Civil enforcement	Legal action taken by the City to recover defaulted fines, including garnishment, writ of seizure and sale, and examinations in aid of execution
Collection Agency Costs (CAC)	The cost to be recovered from the debtor for fees charged by registered collection agencies working on behalf of the City
Defaulted fine	A Provincial Offences Act fine that has remained unpaid past the due date.
Dialer	An automated phone dialing system used to establish contact with the debtor.
Dunning	A process in debt collection in which the creditor makes methodical, and often escalating, communications with the debtor to demand payment.
Enforcement date	The date where Court Services can begin to pursue an outstanding fine, usually after the due date plus a brief grace period.
Examinations in aid of execution	A legal process that allows the City to obtain information about the debtor's ability to pay, such as their income, assets, and liabilities.
Garnishment	A civil enforcement procedure in which a debtor's assets (e.g. wages, sales, bank accounts) are redirected towards paying off debt owed to the City.
Integrated Courts Offences Network (ICON)	The Province's online system that allows staff to manage information on Ontario court cases, including Provincial Offences Act matters. Staff can input information on cases and activities at local courts and generate statistical and other reports for planning and case management.
Notice of Fine and Due Date (NFDD)	A notice that informs the debtor that they have been convicted of an offence and provides offence details, amount owing and other information such as payment instructions.
Part I Provincial Offence Notices	A ticket that is issued to an individual.
Part II Provincial Offence Notices	Parking tickets, including GO Transit parking tickets.
Part III Provincial Offence Notices	A summons (includes a court date).

Term	Definition	
Private Collection Agency (PCA)	Private sector companies with expertise in the area of debt collection. In Ontario, collection agencies must be registered with the Government of Ontario and must follow the rules set out in the <i>Collection and Debt Settlement Services Act</i> . Court Services currently groups their collection agencies into one of two tiers.	
	Tier 1 Collection Agency <ul style="list-style-type: none"> • Manages cases up to one year in default • Collection agency costs range from 12% to 14.85% of the fine amount • Average collection rate of 17.1% 	Tier 2 Collection Agency <ul style="list-style-type: none"> • Manages cases more than one year in default, and/or those which remain uncollected after first assignment • Collection agency costs ranges from 18% to 28% of the fine amount • Average collection rate of 4.2%
Set-off	Deducting the amount a debtor owes the City from their federal tax return.	
Skip tracing	The collections process of finding someone whose whereabouts are unknown.	
Victim Fine Surcharge (VFS)	A Victim Fine Surcharge is imposed and regulated by the Provincial Government and is added to every fine imposed under the Provincial Offences Act other than for parking offences. The amount of the Victim Fine Surcharge is variable, and is based on the amount of the fine. Proceeds from the surcharge are used to maintain and expand provincial services to victims of crime.	
Write-off	In the context of the City's defaulted POA fines, "write-off" means removing the amount owing from the Provincial ICON system. However, POA fines are considered debts to the Crown that are owed in perpetuity and are never forgiven.	
Writs of seizure and sale	Writs of seizure and sale secure the fine against the real property of a debtor and ultimately provides for the potential seizure and sale of the debtor's personal and real property by the sheriff. When a debtor is an owner of real property, the filing of the writ of seizure and sale is an impediment to refinancing that real property.	