

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

Date: August 16, 2019

To: General Government and Licensing Committee

From: Controller and Director, Court Services

Wards: All

SUMMARY

This report recommends that City Council approve a revised write-off policy for fines under the *Provincial Offences Act* (POA) that are deemed uncollectible. The revised policy is an extension of the City's Account Receivable Policy and establishes protocols and thresholds to determine when a defaulted POA fine is uncollectible and therefore eligible for write-off.

In April 2018, the City's Auditor General published a report entitled "Toronto Court Services: Collection of Provincial Offence Default Fines". Through Recommendation #26, Court Services agreed to review the current write-off policy for fines under the POA deemed uncollectible to determine if the policy aligns with existing best practices. This review was undertaken through consultation with Legal Services, Accounting Services, and Revenue Services. The result of this work is the revised POA write-off policy recommended in this report.

The revised policy is in compliance with Public Sector Accounting Standards PS 1201.53 and 1201.54, which stipulate that valuation allowances for financial assets, such as the Allowance for Doubtful Revenue Receivables, are used to reflect any outstanding receivable amounts at their net recoverable value. It is also consistent with the write-off directive and operating guideline issued by the Ministry of the Attorney General in February 2008. To improve the collection of defaulted POA fines, Court Services will be requesting capital funding through the 2020 Budget process for a new information technology system. This request is consistent with Auditor General Recommendation #8.

The revised policy establishes a single set of write-off eligibility criteria for offences under Parts I, II, and III of the POA. This is different from the current policy which has one set of criteria for offences under Parts I and III and another set of criteria for offences under Part II. The revised policy is reflective of Court Service's experience collecting defaulted POA fines and best practices in other Ontario municipalities.

RECOMMENDATIONS

The Controller and Director, Court Services recommend that:

1. City Council approve a revised write-off policy for fines, fees, costs and penalties imposed under Parts I, II and III of the Provincial Offences Act and/or City By-law(s) that have been outstanding for at least two years, may be written off as uncollectible consistent with Article VIII in the City of Toronto Municipal Code Chapter 71 (Financial Control), once the Controller is satisfied that that all reasonable steps to collect the amount owing have been undertaken, and where any of the following apply:
 - a. the person convicted and who owes the unpaid amount(s) has been deceased for two years and collection from an estate is impractical or has been unsuccessful; or
 - b. the person convicted and who owes the unpaid amount(s) no longer resides in the Province of Ontario and the fine(s) is for an offence for which there is no mechanism for inter-provincial enforcement; or
 - c. the City's primary collection methods, including but not limited to, civil enforcement, tax-rolling, collection agencies, and licence suspension and plate denial, have been, or are likely to be, unsuccessful, as determined by the Controller; or
 - d. where supporting documentation providing proof of the conviction and/or payment to satisfy the amount owed cannot be located, a sworn affidavit is filed with the City by the defendant attesting to the fact they have, in fact, previously paid for the fine(s) and that they do not have in their possession the required documentation to prove such a claim; or
 - e. the operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the City Solicitor has confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing to the City; or
 - f. the operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical; or
 - g. the individual or corporation convicted and who owes the unpaid amount(s) cannot be located; or
 - h. a court order or a Provincial or Federal directive determines the fine is no longer payable or collectible or requires that collection efforts must cease.
2. City Council authorize the Controller or his/her designate to annually provide the Ministry of the Attorney General with information regarding the total value of all fines deemed uncollectible and written off during the previous municipal fiscal year as part of the Annual Performance and Progress Report to be submitted to the Ministry no later than June 30th of each year.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

Defaulted fines under the Provincial Offences Act (POA) reside on the province's Integrated Court Offence Network (ICON). Accrued fine revenues reported in the City's SAP system reflect only the portion of outstanding fines that are deemed collectible. Writing off fines deemed uncollectible in accordance with the write-off policy recommended in this report will have no effect on the City's financial position in 2019 or future years.

As part of the year-end review process, staff from Court Services, Revenue Services, and Accounting Services will continue to assess the appropriateness of the fines deemed collectible and recorded as receivables in the City's financial records.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On September 27, 2007, City Council adopted GM7.2: Use of Collection Agencies to Collect Parking Fines. By adopting the recommendations, Council requested that the Directors of Revenue Services and Court Services, through the Treasurer, report to Government Management Committee recommending a policy establishing protocols and thresholds under which *Provincial Offences Act* accounts receivables, including parking fines, that shall be deemed uncollectible and therefore eligible for write-off consistent with the write-off directive and operating guideline published by the Ministry of the Attorney General. The link to the staff report and Council's decision are available at:

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

On December 1, 2008, City Council adopted GM19.5: Write-Off Policy for Fines under the *Provincial Offences Act* Deemed Uncollectible. By adopting the recommendations, Council established protocols and thresholds under which *Provincial Offences Act* accounts receivables, including parking fines, are deemed uncollectible and therefore eligible for write-off consistent with the write-off directive and operating guideline published by the Ministry of the Attorney General. The link to the staff report and Council decision are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.GM19.5>

ISSUE BACKGROUND

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

- a) all provincial offences that exist under provincial legislation (ex. *Highway Traffic Act*, the *Compulsory Automobile Insurance Act*, the *Trespass to Property Act*, *Liquor Licence Act*);

- b) minor federal offences designated as contraventions such as offences issued under the *Canada Marine Act*; and
- c) municipal by-laws.

The POA is divided into three (3) parts:

- Part I of the Act governs minor offences, such as moving violations, with a maximum fine of \$1,000;
- Part II of the Act deals exclusively with parking infractions (issued before August 28, 2017 in the City of Toronto)
- Part III of the Act covers more serious offences, with higher fines in excess of \$1,000 (ex. driving while licence suspended, driving without valid automobile insurance, charges under Occupational Health & Safety legislation)

According to Section 69(1) of the POA, the payment of a fine is in default if any part of it is due and unpaid for fifteen days or more. The City makes every effort to pursue defaulted POA fines in accordance with legislative requirements and Council policies/directives. Collection activities include:

- the issuance of various notices as prescribed under the POA;
- the use of collection agencies in accordance with Council approved policies;
- the use of local and inter-municipal tax-rolling where appropriate in accordance with legislative requirements and inter-municipal agreements;
- the use of civil enforcement mechanisms where appropriate; and
- the use of licence suspension and plate denial processes in accordance with legislative requirements.

COMMENTS

The City makes every effort to collect unpaid fines. There are circumstances that arise for various reasons where unpaid fines are unlikely to be collected. The revised Provincial Offences Act (POA) write-off policy represents an improvement in Court Service's management of debt where collection is unlikely or impractical. This is consistent with Recommendation #26 of the Auditor General's April 2018 report entitled 'Toronto Court Services: Collection of Provincial Offence Default Fines'.

The revised policy reflects situations where all reasonable and appropriate collection efforts have been exhausted prior to considering an amount for write-off. This criteria was established through consultation with Accounting Services, Legal Services, and Revenue Services.

Recommended Changes to the POA Write-Off Policy

The revised POA write-off policy includes new and revised criteria when compared with the current policy approved by Council in 2008. The revised policy establishes a single set of write-off eligibility criteria for offences under Parts I, II, and III of the POA. Under the current policy, separate write-off criteria are established for offences under Part I and III of the POA, and Part II of the POA.

Table 1 describes the revised criteria and compares it with the current criteria approved by Council. The revised policy is based on Court Service's experience collecting defaulted POA fines and a review of best practices in other Ontario municipalities. It is important to note that fines, fees, costs and penalties under the revised POA write-off policy are only eligible for write-off once the Controller is satisfied that all reasonable steps to collect the amount owing have been undertaken and the fine has been in default for at least two years.

Table 1 – Comparison of Proposed and Current POA Write-Off Criteria		
Proposed POA Write-Off Policy (2019)	Current POA Write-Off Policy (2008)	Revision(s)
<ul style="list-style-type: none"> ▪ The person convicted and who owes the unpaid amount(s) has been deceased for two years and collection from an estate is impractical or has been unsuccessful. 	<ul style="list-style-type: none"> ▪ The person convicted and who owes the unpaid amount(s) is deceased and collection from an estate is impractical or has been unsuccessful (applies to all POA fines). 	<ul style="list-style-type: none"> ▪ Added the two-year timeframe.
<ul style="list-style-type: none"> ▪ The person convicted and who owes the unpaid amount(s) no longer resides in the Province of Ontario and the fine(s) is for an offence for which there is no mechanism for inter-provincial enforcement. 	<ul style="list-style-type: none"> ▪ For fines more than fifteen (15) years old, the person convicted and that owes the unpaid amount(s) no longer resides in the Province of Ontario and the fine(s) is for an offence for which there is no mechanism for inter-provincial enforcement (only applies to Part I and III offences). 	<ul style="list-style-type: none"> ▪ The proposed criteria is applicable to offences under Parts I, II, and III of the POA. ▪ Removed the requirement that such fines be more than fifteen (15) years old to be eligible for write-off.
<ul style="list-style-type: none"> ▪ The City's primary collection methods, including but not limited to civil enforcement, tax-rolling, collection agencies, and licence suspension and plate denial, have been, or are likely to be, unsuccessful as determined by the Controller. 	<ul style="list-style-type: none"> ▪ The limitation period to pursue civil enforcement action has expired and other collection mechanisms have been, or are likely to be, unsuccessful as determined by the City Solicitor (only applies to Part I and III offences). ▪ For unpaid fines totalling less than \$1,000, the person convicted and who owes the unpaid amount(s) has reached the age of 90 and no longer possesses a valid driver's license (applies to all POA fines). 	<ul style="list-style-type: none"> ▪ Proposed criteria is applicable to offences under Parts I, II, and III of the POA. ▪ Broadened collection efforts to include other primary collection methods. ▪ Removed reference to the limitation period for civil enforcement as per the <i>Limitation Act</i>. ▪ Removed the age and driver's license restrictions. Under the proposed policy, all defaulted fines are treated equitably.

<ul style="list-style-type: none"> ▪ Where supporting documentation providing proof of the conviction and/or payment to satisfy the amount owed cannot be located, a sworn affidavit is filed with the City by the defendant attesting to the fact they have in fact previously paid for the fine(s) and that they do not have in their possession the required documentation to prove such a claim. 	<ul style="list-style-type: none"> ▪ For violations over 15 years old where supporting documentation providing proof of the conviction and/or payment to satisfy the amount owed cannot be located, a sworn affidavit is filed with the City by the defendant attesting to the fact that they have in fact previously paid for the fine(s) and that they do not have in their possession the required documentation to prove such a claim (only applies to Part I and III offences). 	<ul style="list-style-type: none"> ▪ Proposed criteria is applicable to offences under Parts I, II, and III of the POA. ▪ Removed the requirement that such fines be more than fifteen (15) years old to be eligible for write-off.
<ul style="list-style-type: none"> ▪ The operating entity, business or organization convicted and that owes the unpaid amount(s) has claimed bankruptcy and the Controller's office has confirmed that civil efforts to collect the amount owing have been unsuccessful or that civil efforts to collect the amount owing are not recommended given that it would likely not result in the successful recovery of the amount owing to City. 	<ul style="list-style-type: none"> ▪ Same as proposed (applies to all POA fines). 	<ul style="list-style-type: none"> ▪ No revision
<ul style="list-style-type: none"> ▪ The operating entity, business or organization convicted and that owes the unpaid amount(s) is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical. 	<ul style="list-style-type: none"> ▪ Same as proposed (applies to all POA fines). 	<ul style="list-style-type: none"> ▪ No revision
<ul style="list-style-type: none"> ▪ The individual or corporation convicted and who owes the unpaid amount(s) cannot be located 	<ul style="list-style-type: none"> ▪ Same as proposed (only applies to Part I and III offences). 	<ul style="list-style-type: none"> ▪ Proposed criteria is applicable to offences under Parts I, II, and III of the POA.
<ul style="list-style-type: none"> ▪ A court order or a Provincial or Federal directive requires that collection efforts must cease 	<ul style="list-style-type: none"> ▪ Not present 	<ul style="list-style-type: none"> ▪ New

Compliance with Ministry of the Attorney General Guidelines.

In February 2008, the Ministry of the Attorney General issued directives and guidelines outlining the mandatory requirements that municipalities are expected to meet in order to write-off *Provincial Offences Act* (POA) accounts receivable that have been deemed uncollectible once all reasonable efforts to collect unpaid, defaulted fines have been exhausted. The MAG guidelines are provided in Attachment 1. The revised POA write-off policy recommended in this report is consistent with the operating principles outlined in the MAG guidelines.

CONTACT

Sandra Califaretti, Director, Accounting Services, 416-397-4438,
sandra.califaretti@toronto.ca

Casey Brendon, Director, Revenue Services, 416-392-8065, casey.brendon@toronto.ca

Philip Arhinson, Manager of Finance & Administration, Court Services, City of Toronto,
416-338-7362, philip.arhinson@toronto.ca

Russ Brownell, Policy, Planning & Project Advisor, Court Services, City of Toronto, 416-338-2734, russ.brownell@toronto.ca

SIGNATURE

Susan Garossino
Director, Court Services

Andrew Flynn
Controller

ATTACHMENTS

Attachment 1: Provincial Offences Act – Write-Off Directive and Operating Guideline