

Clause embodied in Report No. 8 of the Community Services Committee, as adopted by the Council of the City of Toronto at its meeting held on October 1, 2 and 3, 2002.

7**Update on the Provincial Zero Tolerance
Policy for Social Assistance Fraud**

(City Council on October 1, 2 and 3, 2002, adopted this Clause, without amendment.)

The Community Services Committee recommends:

- (a) the adoption of the report dated August 6, 2002, from the Commissioner of Community and Neighbourhood Services, subject to amending Recommendation No. (2) so that such recommendations now read as follows:**
 - (1) City Council request the Minister of Community, Family and Children's Services to reconsider the implementation of a lifetime ban for individuals convicted of social assistance fraud;**
 - (2) this report, together with any previous reports reiterating Council's policy with respect to the provincial zero tolerance policy, be forwarded to the Minister of Community, Family and Children's Services and to the Association of Municipalities of Ontario; and**
 - (3) City officials be granted the authority to take the necessary action to give effect thereto."; and**
- (b) that the Chair of the Community Services Committee, and appropriate staff, meet with the Minister of Community, Family and Children's Services to request the Minister to reconsider the zero tolerance policy for social assistance fraud.**

The Community Services Committee reports, for the information of Council, having directed that the Commissioner of Community and Neighbourhood Services be requested to:

- (a) document the increased costs resulting from the zero tolerance policy, such as extra court costs and the cost of increased shelter use, and report thereon to the Community Services Committee; and**
- (b) report to the Community Services Committee on whether it would be in the City's interest, from a compassionate and financial point of view, to cover the full 100 percent cost of social assistance to those suffering from extreme hardship as a result of the lifetime ban; and further that such report include any figures from other municipalities in this regard.**

The Community Services Committee submits the following report (August 6, 2002) from the Commissioner of Community and Neighbourhood Services:

Purpose:

This report updates Council on the implementation of the Province of Ontario's zero tolerance policy for social assistance fraud that was introduced in April 2000. Initially, the new provincial policy is briefly outlined. The report subsequently informs City Council of the number of cases in Toronto that could be affected by the Province's zero tolerance policy, as of August 2002. The report also briefly describes the process by which social assistance fraud is investigated by Toronto Social Services (TSS).

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) City Council request the Minister of Community, Family and Children's Services reconsider the implementation of a lifetime ban for individuals convicted of social assistance fraud;
- (2) this report be forwarded to the Minister of Community, Family and Children's Services and to the Association of Municipalities of Ontario; and
- (3) City officials be granted the authority to take the necessary action to give effect thereto.

Background:

A report from the Commissioner of Community and Neighborhood Services, dated March 8, 2000, provided an overview of the Province's zero tolerance policy for social assistance fraud. On January 18, 2000, Premier Mike Harris announced that the Province would introduce "tough new measures to help end welfare fraud in Ontario," in the form of a new "zero tolerance" policy for social assistance fraud. Starting April 1, 2000, people convicted of social assistance fraud will be banned from receiving social assistance benefits for life, including benefits provided under both Ontario Works (OW) and the Ontario Disability Support Program (ODSP). One conviction will trigger the ban.

The following scenarios outline how the policy will impact different family units:

- (a) if a single recipient is convicted, they will be permanently ineligible for social assistance;
- (b) if a sole support parent is convicted, the recipient is permanently ineligible and assistance will continue for the children only;

- (c) for a couple, if one spouse is convicted, the convicted spouse is permanently ineligible, and assistance will continue at a reduced rate for the other spouse and other children the couple may have; and
- (d) for a couple with children, where both parents/guardians are convicted, assistance will continue for the children only.

This report briefly reviews potential implications of the Provincial zero tolerance policy and discusses the policy's current status. Subsequently, the process by which social assistance fraud is investigated by Toronto Social Services is outlined.

Discussion:

(I) Implications of Provincial Zero Tolerance Policy: Overview:

In its previous report regarding the zero tolerance policy dated March 8, 2000, the City noted that the lifetime ban represents a disproportional response to the problem of fraud within the social assistance system. The following arguments made in the Commissioner's initial assessment of the zero tolerance policy remain valid and are also consistent with the issues that have been raised by many other Ontario municipalities.

- (1) In permanently denying certain citizen's access to a key part of the social safety net, the proposed policy does not seem proportional to either the scale, or the gravity, of the problem of social assistance fraud in Ontario. This is the case even though individuals convicted of fraud will have accepted and served the penalty imposed by the criminal justice system, which may include imprisonment and/or restitution.
- (2) While social assistance fraud is a serious matter, it is not pervasive. Municipal delivery agents and the Province direct substantial efforts to preventing and controlling fraud. Both the Ontario Works Act (OWA) and ODSP introduced new mechanisms intended to strengthen the integrity of the social assistance program, in addition to introducing stringent penalties for those who have been convicted of fraud.
- (3) Lifetime bans from receiving social assistance are uncommon. Even in the United States, where lifetime limits have been established restricting the period one may receive social assistance to 60 months or less, there are potential options for continuing support including other federally funded welfare programs (e.g., food stamps, Medicaid), and state delivered programs.

With the rationalization of other income support programs such as Employment Insurance, now more than ever OW and ODSP are emergency programs meant to serve as a "last resort" to people who have no other sources of income. Both programs meet basic needs, and provide basic necessities to those in need. Toronto Social Services' (TSS) March 8, 2000, report spoke to some of the key potential impacts that could result from the implementation of a lifetime ban for people convicted of defrauding social assistance, which are listed in Attachment 1.

Numerous municipalities have indicated their concern about the extreme lifetime ban enacted under the Province's zero tolerance policy. City Council, at its meeting of April 11, 2000, and a number of other municipalities, including Ottawa, York and London, have supported the City of Waterloo's resolution to retract the policy (see Attachment 2), or have passed similar resolutions.

Municipalities are also aware that addressing the potential consequences of the ban will necessarily fall on them, and on other locally based service providers. For example, a number of jurisdictions contacted by TSS have indicated that, in extenuating circumstances, they may be prepared to use municipal funding to assist families that have been convicted to avoid extreme hardship. At this point, none of the jurisdictions contacted have provided such emergency benefits to individuals or families facing lifetime bans. TSS will continue to monitor the responses of other municipalities that have clients affected by the lifetime ban.

Current Status of Zero Tolerance Policy:

The City Solicitor, in an initial report dated March 30, 2000 (Provincial Zero Tolerance for Social Assistance Fraud Policy), and the City Solicitor and the Commissioner of Community and Neighbourhood Services in a follow-up report dated August 28, 2000, addressed a number of issues related to the actions the City could take to challenge the zero tolerance policy. The reports respectively advised that the City does not have the legal ability to commence a challenge to the zero tolerance for fraud policy, and that the City must assume its validity until such time as it may be struck down.

As of mid-May, a notice of application has been filed with the Ontario Superior Court of Justice challenging the constitutionality of the lifetime ban policy on behalf of three Ontario residents who have been affected by the policy. It is expected that the court will hear full arguments in the fall of 2002 on whether the lifetime ban violates fundamental human rights of former social assistance recipients and their families under the Canadian Charter of Rights and Freedoms and whether the policy is ultra vires the Province.

Although not directly related to the zero tolerance policy, it should also be noted that further proceedings will take place with regards to the Kimberly Rogers case this fall. A previous report to Council dated August 23, 2001 (City Intervention in Rogers vs. Sudbury Case) discussed the case being launched by Ms. Kimberly Rogers as to the constitutionality of Section 36 of Regulation 134/98 under the OWA, which, prior to the introduction of the current zero tolerance policy, imposed bans on receipt of social assistance three-months on first conviction and six months on subsequent convictions. Ms. Rogers faced a three-month ban following a conviction for OW fraud. Due to Ms. Rogers' death in August 2001, the action she commenced did not proceed. However, given the circumstances surrounding her death, a Coroner's inquest in the death of Ms. Rogers will begin on October 7, 2002. The inquest jury will hear evidence about the circumstances surrounding her death, and may make recommendations aimed at preventing similar deaths.

(II) Overview of TSS Fraud Prevention and Control Processes:

Toronto has always made safeguarding the financial integrity of the social assistance system a priority. As discussed in several previous reports to City Council, TSS has put in place an effective series of fraud prevention and control processes. The Division has been committed to a

strategy of continuous improvement with respect to business practices and case review processes related to fraud prevention. These actions have been reinforced by changes incorporated in the new OW legislation that have mandated that municipalities take additional steps to investigate and control fraud. In most cases, TSS implemented these steps well prior to the legislation's passage.

(A) Overview of TSS Fraud Prevention and Control Processes:

Investigation of Fraud Allegations:

This section provides a brief overview of the process by which allegations of fraudulent activity are investigated by TSS. While the process has been described in previous reports to Council, a number of changes have been made to improve its effectiveness.

Allegations related to a client's eligibility for OW or to their level of entitlement come from various sources (e.g., front-line workers, special reviews of files conducted on high-risk cases, information provided through the fraud hotline or third parties). An initial assessment of the allegation is completed, with all pertinent information provided by the client reconfirmed, wherever possible through independent third party sources (e.g., information sharing agreements TSS has with other government agencies [e.g., Revenue Canada]; credit bureau services). Clients may also be contacted to provide additional information, or to explain discrepancies.

In nearly 80 percent of the 11,800 allegations reviewed by TSS in 2001, the allegations were found to be untrue, the information provided to the Division, often through the fraud hotline, was incomplete or inaccurate (e.g., the person identified was not receiving OW), or the review indicated that no changes were required in the way the client's case was being managed.

The overwhelming majority of the remaining reviews (19.0 percent) also produced no evidence of intent to defraud the program. However, client entitlements may not have been appropriate. For instance, a client's circumstances may have changed (e.g., a person had earnings from a part-time job one month), but was not immediately reported to their worker. In these situations, overpayments may be established with clients to recoup benefits they were not entitled to. TSS' management of overpayments was thoroughly reviewed in previous reports to Council dated March 8, 2000 (Provincial Zero Tolerance Policy for Social Assistance Fraud) and July 28, 2000 (Social Assistance Overpayments). The Division continues to improve its ability to minimize the frequency of overpayments, as well as to strengthen its capacity to recover overpayments from clients.

Where a review discovers a possible intent to defraud the OW program, the case is referred to the Division's centralized Fraud Review Unit. In 2001, 117 cases were referred to the Unit, or about 1.0 percent of the 11,800 fraud allegation reviews carried out by the Division in 2001. In 2002, to the end of June, a further 63 cases have been referred to the Unit.

Cases referred to the Unit are then intensively reviewed according to the Division's rigorous policies and procedural guidelines governing fraud investigations. Cases are then reassessed to ensure there is a clear indication of intent to commit fraud, there are no mitigating factors associated with the case, and that the supporting evidence is strong. If these criteria are met, a

case is then forwarded to the Special Review Committee (SRC), an arms length body made up of representatives from the City of Toronto Police Fraud Squad, the Crown Attorney's Office, the City of Toronto Legal Division, and TSS's Fraud Review Unit. The Unit referred 116 cases to the SRC in 2001.

The SRC meets regularly to review potential fraud cases, and determine what action will be taken, including criminal charges, civil action and/or other methods of overpayment recovery. In cases where there is sufficient evidence of fraud, the SRC recommends referral to Toronto Police Services for criminal charges. In 2001, as a result of SRC referrals to the Police, 95 cases were referred for criminal charges. An additional 52 cases were referred to criminal charges prior to June 2002, for a total of 147 cases. Whether or not charges are laid in these cases is the purview of the Police and the Crown Attorney's office.

Cases Potentially Affected by the Lifetime Ban:

In accordance with provincial regulations, only cases in which fraudulent activity occurred after April 1, 2000, will be affected by the Province's zero tolerance policy. Some of the 147 total cases referred to above do not meet this criterion, the fraudulent activity having occurred before this date. However, at this time, fraud charges have been laid or are pending in 91 cases. If convicted, these clients will be subject to the zero tolerance lifetime ban.

Subsequent to charges being laid, all decisions related to a case are the responsibility of the courts and legal system, including the date at which legal proceeding will commence. As a result, it is not possible for the Division to ascertain when any of the above cases will be heard, or when decisions related to any particular case will be rendered.

(B) TSS Fraud Control Review:

TSS' fraud control policies and practices have been substantially affected by a number of significant factors. The Division is thus undertaking a thorough internal review in this area in order to:

- (1) respond on an ongoing basis to the significant and cumulative impacts of provincial regulatory, policy and procedural changes in the eligibility and fraud control areas over the past several years;
- (2) address changes resulting from the implementation of new provincial Service Delivery Model Technology (SDMT); and
- (3) ensure program integrity is protected but also to ensure that policies are in place that are based on tests of fairness and reasonableness with regards to assessing fraudulent activity, particularly given the grave consequences for individuals who are convicted of fraud under the Province's zero tolerance policy.

Given the number of interrelated areas involved, and the complexity of the fraud control process, a multi-year, staged approach is planned. All aspects of the current fraud control process will be scrutinized, and recommended improvements or modifications implemented as individual stages are completed. Best practices employed in other jurisdictions will be identified where relevant (e.g., viable alternatives to prosecution), and their feasibility examined.

Conclusions:

This report updates City Council on the implementation of the Province's zero tolerance policy for social assistance fraud and provides information on the number of cases in Toronto that could be affected by the Province's zero tolerance policy, as of August 2002. TSS will continue to monitor the impacts of the zero tolerance policy, including the experiences of other municipalities and their responses to cases facing a lifetime ban.

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Attachment 1: Impacts of Zero Tolerance Policy

Attachment 2: Regional Municipality of Waterloo's Resolution Concerning the Provincial Government's Policy Intentions on Zero Tolerance for Social Assistance Fraud

Attachment 1

Impacts of Zero Tolerance Policy:

Key potential impacts that could result from the implementation of a lifetime ban for people convicted of defrauding social assistance include the following:

- (1) Forcing individuals who can no longer access social assistance to rely on the shelter system, or face destitution or homelessness.
- (2) Disproportionate impacts may be experienced by families with children, who now constitute approximately half of Toronto's OW caseload, with single parent families alone comprising nearly 30 percent of the total caseload. As the Region of Waterloo has stated in its assessment of the potential effects of the Province's approach: "Consequences of implementing such a policy, especially on families with young children, may include loss of accommodation, the inability of the family to adequately feed, house and provide other essentials for their children and the potential for children to be taken into care..."
- (3) Social assistance also continues to be a source of other key benefits for eligible low-income people, including drug cards and certain other medical benefits (costs of wheelchairs, prosthetic devices). Permanent loss of eligibility for these benefits may be particularly serious for disabled people, who may face life-threatening situations if they cannot access income and other supports.

- (4) The OW program is also a primary source of employment services and supports for eligible low-income persons. People banned for life will permanently lose access to these important supports, potentially making it even more difficult for them to secure income through employment.

(A copy of the Appendix 2, referred to in the foregoing report, was forwarded to all Members of Council with the agenda of the Community Services Committee for its meeting on September 12, 2002, and a copy thereof is on file in the office of the City Clerk, City Hall.)

The Community Services Committee reports for the information of Council, also having had before it during consideration of the foregoing matter a communication (September 11, 2002) from Ms. Ann Dembinski, President, Canadian Union of Public Employees, Local 79, urging the Community Services Committee to support the recommendations contained in the foregoing report.