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## 2015 OPERATING BUDGET BRIEFING NOTE

### Unpaid Provincial Offences Fines

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#### Issue/Background:

At its meeting held on January 29, 2015, the Budget Committee requested a briefing note on a strategy for the City of Toronto to collect unpaid Highway Traffic Act fines including:

- a) the estimated amount of fines from unpaid Highway Traffic Act fines owed to the City of Toronto;
- b) a breakdown of the amount owed for each of the past five (5) years;
- c) the processes required to put unpaid fines on a property tax bill;
- d) any discussions in the past year with the Province of Ontario regarding options for collecting unpaid fines;
- e) additional recommended strategies for collecting unpaid fines; and,
- f) a timeline to bring this account up to date.

*The Provincial Offences Act (POA)* is used to enforce thousands of offences contained in hundreds of Provincial statutes and regulations. The Highway Traffic Act (HTA) and Compulsory Automobile Insurance Act (CAIA) include many offences that result in tickets / summonses issued to drivers. They also generally share the same collection sanctions when fines are not paid and both can result in a suspension of a driver's license.

This briefing note provides information on outstanding HTA and CAIA fines as they are the most common statutes used by Toronto Police Services to address driver conduct. They also comprise the highest volume of charges filed with, and administered by, the City's Court Services Division (i.e. offenses under Parts 1 and 3 of the *Provincial Offences Act*).

The *Provincial Offences Act*, specifically Part 2 of the Act, is also used to enforce parking offences. The Treasurer reports annually to Government Management Committee on parking ticket issuance and collection. The City of Toronto, using tools permitted under provincial legislation (including license plate denial) has one of the highest collection rates in North America with respect to parking ticket fines. Following is the link to the 2013 Parking Activity Report:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM30.2>

The 2014 Parking Ticket Activity Report will be presented to Committee in April/May of 2015.

Table 1, below, summarizes the outstanding fines under Parts 1 and 3 of the *Provincial Offences Act* as at December 31, 2014. Amounts imposed can vary between years when court decisions are suspended or amended in subsequent hearings that may occur months or years later.

Table 1: Outstanding POA Fines (Parts 1 & 3) as at December 31, 2014

Period	Total	Highway Traffic Act	CAIA	Other POA Fines (Part 1 & 3)
	(\$ millions)			
2001 & prior	158.59	39.21	36.94	82.44
2002 - 2009	140.63	40.40	52.70	47.53
2010	25.30	9.47	8.12	7.71
2011	26.11	10.81	6.52	8.79
2012	27.44	11.43	6.40	9.61
2013	21.08	10.08	4.73	6.27
2014	13.07	7.15	2.06	3.85
<b>TOTAL</b>	<b>412.22</b>	<b>128.55</b>	<b>117.47</b>	<b>166.20</b>
		<b>246.02</b>		

### Highway Traffic Act & Compulsory Auto Insurance Act Fines

At the end of 2014, there is approximately \$246 million in outstanding Highway Traffic Act (HTA) and Compulsory Auto Insurance Act (CAIA) fines owing to the City (excluding \$42.2 million in victim fine surcharges owed to the Province). This represents approximately 39% of fines imposed.

Table 2: Outstanding HTA & CAIA Fines as a Percentage of Total Fines

	Outstanding Traffic Fines at Dec. 31, 2014	Total Traffic Fines Imposed	Percentage of Outstanding Fines by year(s)
	(\$ millions)		(%)
2001 and prior	76.15	88.35*balance only at time of 2002 transfer	Not included as total imposed amount unknown
2002-2009	93.10	309.23	30%
2010	17.59	51.71	34%
2011	17.32	53.22	33%
2012	17.83	53.74	33%
2013	14.81	43.56	34%
2014	9.22	32.97	28%
<b>TOTAL</b>	<b>246.02</b>	<b>632.78</b>	

\*Outstanding fine value between 2002-2014 is 31% of all fines imposed during this period.

Of the \$246 million:

- \$76 million (or 31%) relates to fines outstanding for over 13 years (i.e. 2001 & prior years);
- \$93 million (or 38%) represents fines outstanding between 6 and 13 years (i.e. 2002 to 2009);
- \$77 million (or 31%) represents fines outstanding for 5 years or less (i.e. 2010 to 2014).

## **Current Collection Tools and Strategies**

The City currently employs multiple strategies to collect POA fines, including Highway Traffic Act fines, and all are authorized by legislation. The effectiveness of each tool typically depends on the debtor's financial circumstances and the information available to the City about those circumstances. The following are the City's primary strategies for POA fine collection:

- a) Civil Enforcement;
- b) Addition to Property Tax Roll;
- c) Collection Agency Services; and,
- d) Drivers' Licence Suspension/Licence Plate Denial (currently only for parking and red light camera tickets).

Each of those strategies and the manner in which the City uses them is described below. All of the listed tools are available for Highway Traffic Act fines with the exception of License Plate Denial. The sanctions are also available for all other POA fines with the exception of Drivers' License Suspension/License Plate Denial.

### *a) Civil Enforcement*

Section 68 of the POA provides that when a fine is in default, a certificate of default for the imposition of the fine and the amount remaining outstanding may be filed in a civil court and the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement. This is a significant collection tool because civil orders or judgments may be enforced in a number of different ways under the Rules of Civil Procedure, including the following: writ of seizure and sale; garnishment (wages, accounts, debts); and, examinations in aid of execution (formerly known as judgment debtor examinations). Some further general comments about civil enforcement are made and then each of those enforcement options and how the City uses them is discussed below.

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. It is also important for the City to have sufficient information about the debtor to pursue civil enforcement, including the debtor's full name and their date of birth, when not a corporation. Civil enforcement is generally labor intensive and requires legal assistance. Currently, the City's Legal Services division has dedicated staff to provide support for POA civil enforcement activities.

### Writ 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. Further, the City's current strategy is to advise the debtor of how the writ of seizure and sale may be enforced, including the sale of the debtor's interest in the real property. The City has been using this firmer strategy since September, 2013.

Fines that are encompassed by the City's current collection strategy for civil enforcement are expected to have a high collection rate.

### Garnishment

Garnishment allows the City to collect a debt payable to a POA fine debtor. For instance, if the POA fine debtor has money in a bank account and the City has information about that bank account, the City may garnish the money in the bank account to satisfy the POA fine debt. Another common example is the garnishment of wages from a POA fine debtor's employer. 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. However, there have been some successes in this regard.

### Examination in Aid of Execution

An examination in aid of execution allows the City to examine a debtor under oath about why they have not paid their POA fines. Among other things, the City may inquire about the debtor's assets and ability to pay. Examinations in aid of execution can provide useful information but they consume resources and time. Our 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.

### *b) Additions to Property Tax Roll*

Section 381.1 of the *City of Toronto Act, 2006* provides the City with the authority to add defaulted POA fines to the tax roll of a property in the City where all of the owners of the property are responsible for paying the fine. This effectively means that the City may add a defaulted POA fine to a property that is solely owned by the person who was fined, which is a significant restriction as many properties have joint or multiple owners.

The City has been adding fines to the tax rolls of property as a collection tool since September, 2010. 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. To date \$3.5 million has been collected using this sanction.

### *c) Collection Agency Services*

For several years the City's Court Services Division has retained the services of collection agencies to assist with the location and subsequent contact with the debtor to alert them to the outstanding debt. In the Fall of 2014, following issuance of an RFP, the Division contracted with seven (7) collection agencies that are now in receipt of about \$215 million worth of defaulted fines. For the full year of 2014, through the efforts of collection agencies, the City recovered \$8 million. The cost of using collection agencies is added to the amount recoverable from the debtor.

*d) Driver's Licence Suspension/Licence Plate Denials*

Where traffic related fines are in default, the City's Court Services Division notifies the Ministry of Transportation which results in the Ministry mailing a Notice of License Suspension to the individual who has not paid the fine. This sanction is generally effective. Once the fine(s) are paid, the Ministry charges the individual \$150 to have their driver license re-instated.

Information about unpaid parking tickets or red light camera tickets is provided to the Ministry of Transportation who then register this information against the vehicle plate included on the ticket. When the registered owner of the vehicle goes to renew or purchase a new licence plate, the transaction cannot be completed unless the fines are paid or no longer in default.

**Additional Collection Options / Strategies being Pursued**

City Council, at its meeting held March 5 - 7, 2012 adopted a motion asking the Government of Ontario to consider the issues identified in the White Paper on Provincial Offences Act (POA) Unpaid Fines (re: EX16.10 "Ontario Association of Police Services Boards - White Paper: Provincial Offences Act-Unpaid Fines a Billion Dollar Problem"). The following is the link to Council's decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX16.10>

For several years Provincial staff have worked with City staff and staff from other municipalities, the Association of Municipalities of Ontario (AMO) and other Professional Associations with a view to identify opportunities to increase the rate of compliance with court orders where fines are ordered.

Provincial staff have indicated that improving municipalities' ability to collect these fines is a priority. Bill 31, if passed, will allow for plate denial on vehicles owned by individuals convicted of Highway Traffic and associated driving related offences where fines are in default. Discussions with Provincial staff on February 4, 2015 were held. As the Bill is in the Legislature, staff cannot accurately determine a timeline for implementation as the scope of changes will not be known until such time as the Bill is passed into law. On the basis of reviewing what the Bill currently proposes, including making system changes, full implementation could require up to 24 months to complete.

Provincial advocacy around the need for additional legislative and operational changes that could improve results have been ongoing. Other Canadian jurisdictions have negotiated agreements with the Canada Revenue Agency (CRA) that allow the diversion of tax refunds or other Federal payments where unpaid fines are registered with them. Provincial officials are aware of this and indicate they are looking into whether such an arrangement is possible here.

Recently the Province advised City staff that they were not supportive of expanding the property tax sanction where property is jointly owned and not all property owners are responsible for the fine. 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. The cost of filing the Writ is added to the outstanding amount to be collected from the

debtor. While more labour intensive than using the property tax roll sanction, this will allow for the collection of fines that may not otherwise occur.

Expansion of the inter-municipal property tax roll sanction to include more municipalities will also be pursued as the benefits extend to all municipalities, particularly where debtors owe fines in one jurisdiction but own property in another area of the Province.

Appendix A of this Briefing Note provides information on other outstanding fines administered and collected by Court Services related to Parts 1 and 3 of the *Provincial Offences Act*.

**Key Points:**

- The City has been responsible for the administration and collection of fines under Parts 1 and 3 of the *Provincial Offences Act* since 2002 at which time it was downloaded to the City from the Province. Since 2002, the City has collected \$498 million in fines, and we anticipate collecting at least an additional \$54 million with respect to defaulted fines owed as at December 31, 2014. After deducting major costs of operations from the \$498 million collected to date (including costs incurred by other City divisions and charged to Court Services), estimated net revenue on a corporate basis is \$32 million.
- Fine collection success is influenced by many factors. The nature of the fine, the ability of a person to pay, the size of the fine and the collection remedies available all have an impact on whether a fine will be paid.
- Collecting fines is a universal challenge that is shared by many Cities, Provinces, States and Countries.
- The City will continue to take all reasonable action to collect fines and staff will continue to work with Provincial and Municipal partners to identify new means to increase the compliance with court orders to pay fines.

**Attachment:**

Appendix A: Other POA Fines (under Parts 1 and 3 of the POA)

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## APPENDIX A

### Other POA Fines (under Parts 1 and 3 of the POA)

In addition to Highway Traffic Act and Compulsory Automobile Insurance Act offences, fines are imposed on a range of other offences contained in various Provincial statutes and bylaws. Notable statutes and bylaws that attract large amounts of fines include the Occupational Health and Safety Act; Retail Sales Tax Act; Trespass to Property Act; Ontario Securities Act; Safe Streets Act; Liquor Licence Act; TTC and other transit bylaws; and, various City bylaws.

At the end of 2014, there is approximately \$166.2 million in other outstanding POA fines related to Parts 1 and 3 of the Act owing to the City (excluding \$19.8 million in victim fine surcharges owed to the Province).

Table 3: Other POA Fines (Parts 1 & 3) as a Percentage of Total Fines

	Outstanding Fines at Dec. 31, 2014	Total Fines Imposed	Outstanding Fines as a Percentage of Total Fines
	(\$ millions)		(%)
2001 and prior	82.44	95.65 at time of transfer	Not known
2002-2009	47.53	56.65	84%
2010	7.71	13.21	58%
2011	8.79	15.42	57%
2012	9.61	16.82	57%
2013	6.27	13.01	48%
2014	3.85	11.67	33%
<b>TOTAL</b>	<b>166.20</b>	<b>222.43</b>	<b>66% excludes pre-2002</b>

Of the \$166.2 million:

- \$82.4 million (or 50%) relates to fines outstanding for over 13 years (i.e. 2001 & prior years);
- \$47.5 million (or 29%) represents fines outstanding between 6 and 13 years (i.e. 2002 to 2009);
- \$36.2 million (or 21%) represents fines outstanding for 5 years or less (i.e. 2010 to 2014).

There are various fines including those under the Safe Streets Act, Trespassing Act, City and TTC bylaws that, by the nature of the offence, are difficult to collect. Sanctions including plate denial or driver license suspension are not available measures, and the use of collection agencies is not effective.

Staff estimate that fines that are by and large unlikely to be collected (either by their nature or due to their age) total about \$132 million. As a result, it is unreasonable to project that all unpaid fines will be collected nor are these amounts like other accounts that can "brought up to date".