

Toronto Court Services: Collection of Provincial Offence Default Fines

Date: April 26, 2018
To: Audit Committee
From: Auditor General
Wards: All

SUMMARY

In 2002, responsibility under the Provincial Offences Act (POA) for conducting most prosecutions, collecting fines and enforcing payment within the city, was transferred from the Ontario Ministry of the Attorney General to the City of Toronto. Administration of POA-related matters at the City is managed by the Court Services Division, with the exception of collection of payments for parking violations which fall under the responsibility of the Revenue Services Division.

Enforcing the payment of fines is integral to ensuring the fair administration of justice and to deterring future violations. In the majority of cases, offenders voluntarily pay their fines in a timely manner. This audit focused on the Division's management and collection processes of the fines that have gone into default. As of June 2017, there were over two million cases in default with a total balance outstanding of \$577 million. This includes \$63 million to be collected on behalf of the Province and \$93 million in collection agency costs added by Court Services in order to pay for potential collection agency commissions.

The audit makes 31 recommendations to help the Court Services Division collect defaulted POA fines, by strengthening its collection approach and the use of enforcement tools to encourage payment.

The findings from this audit, together with a pattern of observations made during previous audits, point to a clear need to transform the City's approach to the collection of overdue accounts. Centralizing the City's receivables and collections management will bring improved oversight, economies of scale, and specialized knowledge to help support and modernize the City's collection processes.

RECOMMENDATIONS

The Auditor General recommends that:

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.
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.
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.

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.

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.

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.

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.

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.

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.

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.

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.

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".

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.

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.

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.

FINANCIAL IMPACT

Several recommendations relating to the development of a more comprehensive collections strategy as well as the improved management of collection agencies, is expected to improve the collection of defaulted fines. Additionally, the pursuit of new, or expanded use of existing, collection tools is expected to generate extra streams of collections. The exact amount of additional revenue is not determinable at this time.

DECISION HISTORY

The Auditor General's 2017 Audit Work Plan included an audit of Court Services Revenue Controls. The work plan is available at:

<https://www.toronto.ca/legdocs/mmis/2016/au/bgrd/backgroundfile-97443.pdf>

COMMENTS

The Province transferred the responsibility for the administration of POA-related matters to the City in 2002. That handover included \$200 million in outstanding defaulted fines. POA offences include violations of the Highway Traffic Act, Compulsory Automobile Insurance Act, City bylaws, and many more. Administration of POA-related matters at the City is managed by the Court Services Division, with the exception of collection of payments for parking violations which fall under the responsibility of the Revenue Services Division.

This audit looked at Court Services management of collections on the \$577 million¹ in defaulted POA fines stemming from over two million cases, of which 74 per cent has been outstanding for more than five years.

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

During this audit, we observed the need for a methodical, consistent and timely approach to collecting defaulted fines. The best collection approaches will vary based on the amount and age of the debt, the type of offence, and the collection tools available. Effective collection strategies are needed for difficult accounts, such as high-balance debts, debts from companies, and debts from repeat offenders. In addition, the Division should strengthen the oversight and assignment of accounts to its private collection agencies.

Another key element that will have a positive impact on debt collection is to improve the quality of data collected on debtors. To facilitate this and other areas of collections, Court Services needs a robust collections management system. The provincial Integrated Courts Offences Network (ICON) system is insufficient to meet the City's needs in this regard.

The Division needs to better leverage the tools it has available to encourage payment. Court Services currently makes use of a variety of tools to encourage debtors to pay their fines, but these tools are not always used to their fullest extent. For example, driver's licence suspensions did not appear to be applied to all eligible fines, Certificates of Default were not prioritized to enable civil enforcement, and not all eligible fines were referred to Legal Services for addition to the debtor's property tax roll.

In addition, other channels for debt collection should be actively pursued, such as an agreement with the Canada Revenue Agency to participate in its set-off programs. These programs enable tax refunds and credits to be applied against eligible debts. The City should also pursue legislative changes that would allow it to require fines to be paid before a debtor can obtain a business licence from the City.

The findings from this audit, together with a pattern of observations made during previous audits, point to a clear need to transform the City's approach to collecting overdue accounts. Centralizing the City's receivables and collections management will bring improved oversight, economies of scale, and specialized knowledge to help support and modernize the City's collection processes.

The audit report entitled "Toronto Court Services - Collection of Provincial Offence Default Fines" is attached as Attachment 1. Management's response to each of the recommendations contained in the report will be attached as Attachment 2.

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.

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SIGNATURE

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Auditor General

ATTACHMENTS

Attachment 1: Toronto Court Services: Collection of Provincial Offence Default Fines

Not available at time of preparation of this report:

Attachment 2: Management's Response to the Auditor General's Report Entitled:
"Toronto Court Services: Collection of Provincial Offence Default Fines"