

Request for Decision

Outstanding Provincial Offences Amounts

Presented To:	City Council
Presented:	Tuesday, Nov 20, 2018
Report Date	Wednesday, Nov 07, 2018
Type:	Routine Management Reports

Resolution

THAT the City of Greater Sudbury authorizes the write-off of Provincial Offences fines that have been deemed uncollectible and total \$3,451,847.60, in accordance with the City of Greater Sudbury's Write-off Policy of Provincial Offences Act (POA) Fines, as outlined in the report entitled "Provincial Offences Write-off Report" from the General Manager of Corporate Services, presented at the City Council meeting of November 20, 2018.

AND THAT any necessary by-law be prepared.

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

The purpose of this report is to request Council's authorization to write-off Provincial Offences fines that have been deemed uncollectible and total \$3,451,847.60.

Financial Implications

Provincial Offences fines are recorded on a cash basis for accounting purposes. Therefore, there is no financial impact from the write-off of these uncollectible accounts.

Signed By

Report Prepared By

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Division Review

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Financial Implications

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Recommended by the Department

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Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
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Executive Summary

The purpose of this report is to request Council's authorization to write-off Provincial Offences fines that have been deemed uncollectible and total \$3,451,847.60.

Background

In the year 2000, the Province of Ontario transferred the responsibility of the administration and operation of the Provincial Offences Court to the City of Greater Sudbury (the City), and this was done through a Memorandum of Understanding (MOU) and Local Side Agreement (LSA) between the City and the Ministry of the Attorney General for the Province. Municipalities were also transferred all outstanding provincial offences fines owing to the province. The City of Greater Sudbury received a transfer of approximately \$6,000,000 in unpaid fines in 2000.

Shortly after the province completed the transfer of the Provincial Offences Courts to municipalities in 2000, the vast majority of municipalities undertook large write-offs of the fines they inherited from the province which they deemed to be uncollectible. The Ministry of the Attorney General (MAG) recommends that accounts receivable should be reviewed regularly to identify potential write-offs and to identify accounts deemed uncollectible. However, the City of Greater Sudbury never carried out an initial write-off of the provincial offences fines it now was owed. The only write-off of Provincial Offences fines that the City of Greater Sudbury has undertaken was the write-off of outstanding parking fines from 1988 to 2010, which was approved by Council in August of 2016.

Failure of an offender to pay an imposed fee on time will result in the fine going into default. The challenge for all Ontario Municipalities is that *1 in 5 POA fines are not paid on time*. Once a fine becomes defaulted, collection actions commence to try to get payment of the fine, such as driver's licence suspensions, licence plate validation denial, and involvement of collection agencies. These additional collections efforts involve additional administrative costs and efforts.

POA fines are debts that are owed to the Crown and do not disappear with time and must be paid. The Court office can apply various enforcement tools for the purpose of collection regardless of when the fine was imposed. POA fines are retained by the City except for the Victim Fine Surcharge and MAG's additional fees, which are remitted back to the province unless the offence is

committed by the municipality, in which case the whole fine is remitted to the province.

CGS Provincial Offences Collection Strategy

A collection strategy has been put in place to maximize default collection efforts and encourage payment in full of outstanding fines and associated administrative charges. Set fines are established through the judicial process and alternate fine amounts are court ordered. CGS staff does not have the authority to alter, amend or reduce fines. An individual who wishes to challenge a conviction or a fine amount must apply through the courts by filing for a reopening, an appeal or an extension.

Fine collection success is influenced by many factors, including the nature and size of the fine; the circumstances of the citizen, including their ability to pay; and collection tools available. Collecting fines is a universal challenge for Ontario municipalities. Municipalities continue to take all reasonable actions to collect defaulted fines and work with our Provincial and Municipal partners to identify and lobby for improvements to the fine collection and enforcement system.

The City of Greater Sudbury's POA court office has two full-time collection clerks who are responsible for coordinating the collection efforts of the City to recover defaulted fines. At the present time, the City of Greater Sudbury has approximately \$19,800,000 owing for all defaulted fines. The City currently uses the following tools for the collection of defaulted fines:

1. Court ordered Payment Plans
2. In-house Payment Plans
3. Licence Suspension and Plate Denial
4. Civil Enforcement
5. Adding Defaulted Fines to Property Tax Roll Collection
6. Collection Agencies

Court Ordered Payment Plans

If a court order is imposed for smaller payments to be made on a scheduled payment plan, the POA Office will monitor the file to make sure that the payments are made in accordance to the order. If a payment is missed, the POA Office will note the fine in default again and will commence further collection efforts.

In-house Payment Plans

If an offender calls and notifies the POA office that their fine is due shortly and they do not have the ability to pay it all off at once, the collection clerks may negotiate a payment plan with the offender in order to allow them more time to pay before commencing further collections efforts. Similar to court ordered payment plans, the POA Office will monitor the file and will commence further collection efforts if a payment is missed.

Licence Suspension and Plate Denial

The POA Office has found that driver's licence suspensions and plate denial are the most effective tools used for collection efforts. These are applied automatically where legislated authority allows for it. Certain provincial offences (such as all *Highway Traffic Act* offences) allow for the suspension of a driver's licence after the fine imposed goes into default. Losing a driver's licence also incurs other costs, including a fee payable to the MTO to reinstate the licence once the fine is paid. Plate denials are available when an offender has not paid a parking fine, and the fine has entered into default. Offenders with outstanding defaulted parking fines will not be able to renew their vehicle plate stickers without paying off all of the fines.

Civil Enforcement

Civil enforcement refers to a series of tools available through Small Claims Court. The most commonly used tool is the garnishment of wages and/or bank accounts. Where there is sufficient information to identify appropriate sources of income, the individual's employer must pay 20% of the individual's wages to the court as payment towards clearing the individual's debt.

Other available tools are property liens which are registered against the individual's property and writs that are an execution against the individual's name. Debtor examinations are also used to gather financial information on an offender who has fines in default, as the examinations are done under oath and the person must provide the requested information since failing to do so could result in them being held in contempt of court and a possible warrant issued for their arrest.

Adding Defaulted Fines to Property Tax Roll Collection

In the summer of 2017, the Provincial Offences office began using a new collection tool, adding defaulted fines to property tax collection rolls. This tool uses the coordinated efforts of the POA office, the legal department, and the tax department in order to recover outstanding defaulted fines. The title of the property must be held solely in the offender's name in order to use this tool. The offender can be a person or a corporation. Generally this tool is used with offenders who have larger and/or multiple fines, given the effort and costs involved with this tool. The implementation of this tool has been a success, as the

POA office has collected \$104,115 through property tax roll collection since June of 2017.

Collection Agencies

The Provincial Offences Office submits unpaid fines to collection agencies after all other collection efforts have been exhausted. Individuals whose fines have gone into default can expect to hear from a collection agency that has been retained for the collection of unpaid fines. The City currently uses two (2) Collection Agencies. Under the Collection Agency Act, an agency is permitted to send letters and conduct follow-up calls for purposes of collecting a debt or unpaid fines. Representatives of the agencies will encourage individuals to pay the defaulted fines and/or make payment arrangements if necessary.

Collection agency fees, in the range of 12-23% of the fine, are added to the POA fine and are fully recoverable from the defendants. Fees are not paid to the collection agency unless the fines are successfully collected so there is no direct cost to the City.

Proposed 2018 Write-Off

Once all efforts to collect a defaulted fine have been exhausted, the fine should be considered to be included in a write-off. The recommended best practice of writing off uncollectible Provincial Offence fines suggests that write-offs must be in default for a minimum of 2 years, with the exception of minor underpayments. The proposed 2018 write-off is in accordance with the City's Write-off Policy, which was approved by the Policy Committee on April 21, 2010. The proposed write-off consists of 14,126 charges, which are broken down as follows:

Time Period	# Of Charges	Total Fine Amounts
1960 – 1979	364	\$33,349.64
1980 – 1989	403	\$80,188.83
1990 – 1999	8,326	\$2,341,895.48
2000 – 2010	4,802	\$939,757.92
2011 – Present	231	\$56,655.73
Totals	14,126	\$3,451,847.60

The criteria used to select these charges for the write-off varies. For fines with offence dates in the period from January 1, 1960 to December 31, 1999, the write-off includes all fines where the last payment was made as of, or prior to, January 1, 2015, there is no valid extension of time to pay or payment plan in

place, and the fine is not being garnished from the offender's pay or is on the offender's property tax roll.

For fines with offence dates in the period from January 1, 2000 to December 31, 2010, the write-off includes all fines where the last payment was made as of, or prior to, January 1, 2016, there is no valid extension of time to pay or payment plan in place, and the fine is not being garnished from the offender's pay or is on the offender's property tax roll. The write-off does not include fines from this time period where the offender's driver's licence can be suspended for the non-payment of the fine.

For fines with offence dates from the period from January 1, 2011, to the present, the write-off includes all fines owing by now deceased persons and dissolved companies.

In addition to the fines noted above, also included in the write-off are fines which have been paid but there has been an underpayment on the administrative fees of the Provincial Offences court office and/or court costs which were added to the fine. Generally these fees and court costs are minimal, and the costs of enforcement would exceed the amount owing.

It should be noted that all defaulted fines with offence dates prior to 2011 have been part of five separate collection agency placements, and none of the collection agencies have been successful at collecting the fines.

It should be stressed that POA defaulted fines which are written off are done so only for accounting purposes. The write-off does not absolve a convicted offender from the requirement to pay the fine, as debts to the Crown are owed in perpetuity and are never forgiven. We are required to retain adequate records after an account is written off in order to possibly reinstate for collection efforts in the future. The fines which are written off will continue to be recorded in the Court Administration Management System (CAMS) that the City uses, though they will be removed from the ICON system used by the province. Should the City be able to collect on a fine which has been written off, or should an offender pay a fine that has been written off, Court staff will use the information in the CAMS system to re-enter the information into the ICON system for payment.

Resource Links

Provincial Offences Act

<https://www.ontario.ca/laws/statute/90p33>

Write Off Policy for Provincial Offences Act (POA) Fines, Report presented April 21, 2010:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=237&itemid=2976&lang=en>

POA Fines on the Tax Roll, Report presented May 16, 2012:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=497&itemid=5906&lang=en>

Write-Off of Uncollectible Provincial Offences Fines, Report presented July 15, 2016:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=950&itemid=11851&lang=en>

Provincial Offences Collection Strategy, Report presented December 13, 2016:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1034&itemid=11633&lang=en>