10
COURT SERVICES PROVINCIAL OFFENCES ACT WRITE-OFF OF UNCOLLECTABLE FINES

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated May 11, 2009, from the Commissioner of Corporate Services.

1. RECOMMENDATION

It is recommended that in accordance with the Ministry of Attorney General's Directive and Operating Guideline, the Region write-off uncollected unpaid court fine accounts totalling $4.4 million, transferred to the Region by the Province in 1999.

2. PURPOSE

The purpose of this report is:

a. To explain the basis and the need to write off Provincial Offences Act (POA) defaulted fines based on The Region's Court Services Collections Policy and The Ministry of Attorney General's Directive and Operating Guideline, whereby all criteria for write-off of uncollectable amounts have been followed.

b. To specify Court Services ongoing administration of the written-off and purged accounts from the provincial Integrated Court Offences Network (ICON).

3. BACKGROUND

Numerous unpaid fines were transferred to the Region in 1999

On July 12, 1999 responsibility for the collection of financial penalties imposed under the *Provincial Offences Act* (POA) was transferred from the Province of Ontario to The Regional Municipality of York for offences committed in York Region totalling approximately $13 million.

All practicable collection steps have now been taken

Depending on the nature of the offence, unpaid court debts can be subject to a range of enforcement sanctions including the suspension of drivers' licences, the denial of vehicle plate renewals, referral to collection agencies, application to civil courts for writs of seizure and sale, etc. Despite all available enforcement and collection efforts, certain court debts have remained as uncollectable.

Some fines are no longer realistically collectable

Of the original $13 million uncollected fine balance transferred from the Province when responsibility was downloaded to the Region in 1999, approximately $6 million remains outstanding. The probability of collection on some of these accounts is now anticipated to be so low that keeping them as a current inventory item would overestimate the true value of the receivable.

Provincial directives now allow for “write-off”

In February 2008, the Ministry of Attorney General (MAG) published their *Provincial Offences Act* Write-Off Directive and Operating Guideline for the handling of POA fines deemed uncollectable. Its purposes are to ensure that municipal partners have exercised due diligence and made all reasonable efforts to minimize the value of POA accounts receivable recommended for write-off, and to provide best practices regarding the write-off of POA accounts receivable that have been deemed uncollectable.

Administrative “write-off” does not absolve guilty parties

For the purpose of MAG policy, “write-off” means the cessation of active collection. The decision to write-off is a decision to be made by the Municipal Partner once all reasonable efforts to collect unpaid, defaulted fines have been exhausted. POA accounts receivable may be written off for accounting purposes only and this does not absolve a convicted offender from the requirement to pay a fine, as debts to the Crown are perpetual and never forgiven. Unpaid debts can be quickly reinstated and enforced if a defendant comes to notice in the future.

Regional Council has already approved “write-off” in principle

In November 2008, Regional Council approved the Court Services Collections Policy for *Provincial Offences Act* Default Fines which addressed collections and write-off of uncollectable accounts. Court Services will review POA accounts receivable semi-annually to identify potential write-offs, and annually to identify accounts receivable deemed uncollectable.

4. ANALYSIS AND OPTIONS

4.1 Selection criteria of fines for write-off

Only aged accounts (pre-1999) are included

All accounts selected for write-off are fines that were transferred to the Region from the Province and were defaulted prior to October 1, 1999. The majority of these uncollectable fines have been in default over 10 years, exceeding the requirement in MAG's directive which indicated that, with the exception of minor underpayments, POA fines marked for write-off must be in default for a minimum of two years.

These are cases with no reasonable prospect of collection

In accordance with the Council and Ministry of the Attorney General approved Write-Off Policy, cases that appear to have remaining enforcement options are not being proposed for write-off. For example, fines that are coded with a Licence Suspension have not been included with this write-off proposal because there remains a possibility that the fines could be paid if the defendant seeks a valid Ontario driver's licence from the Ministry of Transportation in the future.

Over 24,000 cases have been identified

Due to the large volume of uncollectable fine accounts to be coded as write-off (24,300 accounts), the listing of the individual accounts is not provided with this report. Court Services has consulted with auditors at the Region and MAG and will retain adequate records pertaining to all these proposed write-off accounts. The table below details the number of fines and the amounts by year of default.

Table 1
Write-Off by Default Year

Default Year	Number of Fines	Sum of Fines
1987	4	$655
1988	2	$770
1989	4	$206
1990	2,395	$221,128
1991	5,306	$480,097
1992	3,630	$505,143
1993	3,848	$486,080
1994	1,719	$547,189
1995	1,411	$359,753
1996	1,431	$314,749
1997	1,518	$416,408
1998	1,641	$622,486
1999	1,391	$457,741
Grand Total	24,300	$4,412,405

Note: it is believed that MAG purged many old accounts prior to the transfer, consequently there are now very few cases older than 1990.

4.2 Collection measures and efforts exhausted

External collection agencies have been used

At the time of transfer in 1999, unpaid fines totalling $13 million were transferred to the Region's Court Services Branch for collection action. Many of these transferred cases had been outstanding for several years. Due to the age of some of the cases and concerns about possible accuracy, the main enforcement tool used in the older cases was referral to Collection Agencies rather than more direct methods such as drivers' licence suspension.

Collection efforts have been significantly increased

In recent years, Court Services has been actively addressing collections in a number of ways. In May 2006, Council approved the setting up of an internal collections team within Court Services. Additionally, contracts with external collection agencies were reviewed, leading to increased productivity and better control over external service providers. In January 2007, Regional Council awarded collection contracts to two competing collection agencies for Collection Services on all fines.

All reasonable efforts have been made

Collections of the fines transferred from the Province have been difficult and in some instances impossible for various reasons, including the age the fine, inability to locate the offender, and the lack of information on the fine. For instance, in some cases transferred there may be no driver licence number, incomplete name and address, missing court file, etc. All fines recommended for write-off have had all reasonable collections efforts exhausted.

4.3 Provincial guidelines for write-off

In February 2008, the Ministry of Attorney General published their *Provincial Offences Act* Write-Off Directive and Operating Guideline for the handling of POA fines deemed uncollectable. Court Services management followed the Mandatory Requirements General Section in MAG's Directive and Operating Guideline, and further had obtained independent opinions from the Region's internal audit and MAG's auditor on the appropriateness and completeness on these 'write-off' requirements.

4.4 Ongoing administration of debt

The Ministry of Attorney General's POA Write-Off Directive and Operating Guideline is based on the principle that 'POA accounts receivable may be written off for accounting purposes only' as 'debts to the Crown are owed in perpetuity and are never forgiven'. If subsequent payment is received on the written-off account, the payment received would be recorded as revenue with supporting documentation and distributed in accordance with the MOU.

5. FINANCIAL IMPLICATIONS

Currently, the Region uses the cash basis of accounting for POA Courts collections and does not recognize a POA Courts receivable, therefore any council approved write-off of accounts receivable and ICON accounts purged will have no impact on the Region's financial statement.

6. LOCAL MUNICIPAL IMPACT

The revenue sharing agreement between the area municipalities and the Region provides that the Region maintain gross revenue from charges laid by the York Regional Police under the Highway Traffic Act and is responsible for all costs of the program. With the exception of certain "dedicated" fines, the remaining revenues are distributed to the area municipalities in proportions based on their respective annual Regional levy.

The POA write-off of uncollectable fines will have no impact on the revenue sharing agreement in place. If subsequent payment is received on any written-off account, the payment received will be recorded as revenue with supporting documents and distributed in accordance with the MOU and the Intermunicipal Agreement.

7. CONCLUSION

Based on the Region's Collection Policy for Provincial Offences Act Defaulted Fines and the Ministry of Attorney General's Provincial Offences Act Write-Off Directive and Operating Guidelines, staff recommends that Regional Council approve the write-off of these uncollectable POA fines.

For more information on this report, please contact Norman Scarratt, Director, Court Services at Ext. 3250.

The Senior Management Group has reviewed this report.