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COURT SERVICES
PROVINCIAL OFFENCES ACT
WRITE-OFF OF UNCOLLECTABLE FINES

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report dated November 3, 2011, from the Commissioner of Corporate Services.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council request the assistance of the Federation of Canadian Municipalities to advocate for changes to allow for "income tax attachment" of unpaid fines under the *Provincial Offences Act* (POA).

2. Court fines which have been deemed uncollectable totalling $507,129 be written off in accordance with the York Region Court Services Collection Policy.

3. Authority be delegated to the Commissioner of Corporate Services to approve the write-off of future minor underpayments.

2. PURPOSE

The purpose of this report is to rationalize the need for more effective fine enforcement sanctions, to delegate authority to the Commissioner of Corporate Services to approve the annual write-off of minor underpayments, and to recommend write-offs of certain accounts that have been deemed uncollectable.

3. BACKGROUND

Provincial directives allow for "write-off" of uncollectable accounts and provide guidance with respect to best practices

In February 2008, the Ministry of Attorney General (MAG) published a *Provincial Offences Act Write-Off Directive and Operating Guideline* for the handling of POA fines deemed uncollectable. This document provides guidance with respect to best practices regarding the write-off of POA accounts receivable that have been deemed uncollectable.

York Region implemented strategies to maximize default collection efforts

York Region Court Services has been actively addressing collections in a number of ways over the past several years. In November 2008, Council approved the Court Services Collections Policy for *Provincial Offences Act* default fines which addressed collections and write-off of uncollectable accounts.

In accordance with this policy, York Region collection staff review POA accounts receivable semi-annually to identify potential write-offs, and annually to identify accounts receivable deemed uncollectable. Court staff also manage in-house collection functions (which includes the suspension of driver's licences) in addition to managing external service providers such as the first placement collection agencies.

To ensure all collection efforts are exhausted, a strategy was developed and implemented in 2010 to place fines that had been outstanding for more than one year and that may have previously been listed with a first placement agency with a second placement agency.

Administrative "write-off" does not absolve guilty parties

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 Memorandum of Understanding between the Ministry of the Attorney General and York Region.

4. ANALYSIS AND OPTIONS

Fine enforcement is a growing problem in Ontario

The total of unpaid fines across Ontario now exceeds one billion dollars and all court areas are experiencing difficulty in collecting fines using the available enforcement sanctions. This results in widespread non-compliance with judicial orders which diminishes public confidence in the integrity of the administration of justice. Furthermore, as fine revenues are directed in legislation to be offset against the costs of providing vital court support operations (pursuant to *Part X of the Provincial Offences Act*) this also means that the proper funding of the courts system is being placed in jeopardy.

More effective fine enforcement sanctions are needed

The single most effective fine enforcement sanction currently available is the suspension of driver's licences. However, this sanction is only available in certain specified cases and cannot be applied to all outstanding fines. Other sanctions such as the use of collection agencies, the denial of vehicle licence plates and the commencement of civil proceedings can be effective depending on the type of case and the amount outstanding. The recently legislated power to add fines to property tax rolls (*Section 4 of the Good Government Act 2009*) can only be used in a small number of very narrowly defined cases and has no broad application. There remains a need for better and more cost-effective sanctions to ensure compliance with judicial decisions.

Attaching outstanding fines to income taxes would be a highly effective enforcement tool

From the experience of other jurisdictions (in particular Alberta) it is clear that when fines are added to income tax rolls, a high rate of collection can be achieved. For tax-payers who are expecting an income tax refund, the fine can be deducted directly from the refund. For taxpayers who have outstanding tax to pay, fines can be added to the amount outstanding and may also attract further penalties and enforcement sanctions through the Canada Revenue Agency (CRA) process.

Ontario has been asked to consider entering into an agreement with the Federal Government

During the *Provincial Offences Act* Streamlining project (2006 to 2009), York Region's Director of Court Services requested that provincial staff investigate the possibility of "income tax attachment" as a way to streamline the enforcement aspects of the court process. Similar requests have also been made by the Municipal Court Managers' Association of Ontario, most recently at strategic meetings with senior provincial staff on July 27, 2011 and September 28, 2011. It is not clear at this point whether the Ontario Ministry of Revenue is prepared to address this issue with their Federal counterparts and in an effort to move this initiative forward staff recommend that Regional Council request the assistance of the Federation of Canadian Municipalities to advocate for changes to allow for "income tax attachment" in Ontario.

Numerous unpaid fines were transferred to the Region in 1999

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

York Region is making all practical efforts under the current available enforcement arrangements

In accordance with the fine enforcement policy authorized by Council in November 2008, Court Services staff take every practical step to enforce judicial orders. Using a combination of in-house and external resources, a wide range of enforcement sanctions are being applied, depending on the case type and amount outstanding. The Ontario Municipal CAO's Benchmarking Initiative (OMBI) indicates that York Region is collecting a higher percentage of fines than comparator municipalities. Any meaningful improvement in collection performance would only come if new sanctions were made available by the Province.

Over 24,000 cases were identified and written off as cases with no reasonable prospect of collection in 2009

In June 2009, Regional Council approved the write-off of over 24,000 cases totalling approximately $4.4 million with enforcement dates from 1987 through 1999. These cases had been identified as cases with no reasonable prospect of collection and were cases that had been transferred from the Province to the Region.

In accordance with the Provincial Offences Act Write-Off Directive and Operating Guideline and the Court Services fine enforcement policy all outstanding cases are reviewed annually to identify cases that should be recommended for write-off.

Minor underpayments are frequently inappropriate for collection activity

The vast majority of these cases (7,799 or 93.3% of the total number) are classified as "minor underpayments" (i.e. $25.00 and under). It is important to note that the legislation has a tendency to create minor underpayments through the automatic addition of late fees and other costs at specified points in time. On many occasions, these extra amounts are added to the fine after the defendant has mailed their payment to the court office. In the interests of justice and fairness, it has always been both provincial and municipal practice to excuse payment of the added amounts in these circumstances. Given the large number of minor underpayments that are inherent in the system, Council may wish to consider delegating authority to approve the write-off of balances of $25.00 and under to the Commissioner of Court Services. At this time the minor underpayments represent $167,002 of the overall write-off total of $507,129

Only cases with no reasonable prospect of collection are being recommended for write-off

Despite all available enforcement and collection efforts, certain court debts have remained uncollectable. At this time, 8,351 cases have been identified as cases with no reasonable prospect of collection and are, therefore, being recommended for write-off.

Of this total, 7,799 fine accounts totalling $167,002 (with enforcement dates between 1979 and 2009) are fines that either have a low outstanding balance ($25.00 or less) or have an outstanding administrative cost that was uncollectable as a result of timing issues. The remaining 552 fines totalling $340,127 (with enforcement dates between 1999 and 2007) have been deemed uncollectable.

Due to the volume of these accounts, the listing of the individual accounts is not provided with this report. The table below provides a summary of the number of fines eligible for write-off. The total number of cases recommended for write-off includes 33 cases with a total value of $930 with enforcement dates between 1979 and 1998 which were not previously identified for write-off in 2009 as they had not met the write-off criteria at that time.

Table 1
Fines Recommended for Write-Off

Default Years	Number of fines to be written-off	Value of fines to be written-off
1979 - 1998	33	$ 930
1999	249	$ 41,814
2000	1,572	$138,008
2001	1,632	$ 93,042
2002	1,366	$ 64,550
2003	930	$ 42,744
2004	555	$ 14,091
2005	504	$ 18,715
2006	319	$ 50,858
2007	382	$ 24,972
2008	419	$ 8,695
2009	390	$ 8,710
Grand Total	8,351	$507,129

Link to Key Council-approved Plans

From Vision to Results: 2011 to 2105 Strategic Plan
Priority Area – Manage the Region’s Finances Prudently
Practise sound Fiscal Management.

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

There is no direct financial municipal impact associated with this report.

7. CONCLUSION

More effective fine enforcement sanctions are needed in order to ensure compliance with POA judicial decisions. In an effort to streamline processes, it is recommended that authority be delegated to the Commissioner of Corporate Services to write-off future minor underpayments of POA fines deemed uncollectable. Staff also recommend that the uncollectable POA fines identified in this report be written-off in accordance with 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 Guideline.*

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

The Senior Management Group has reviewed this report.