7
COURT SERVICES - COLLECTIONS POLICY FOR PROVINCIAL OFFENCES ACT DEFAULT FINES

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, October 8, 2008, from the Commissioner of Finance and the Commissioner of Corporate Services:

1. RECOMMENDATION

It is recommended that Regional Council approve the Collection Policy for Provincial Offences Act Default Fines drafted by Court Services staff pursuant to directives from the Ministry of the Attorney General.

2. PURPOSE

The purpose of this report is:

a. To explain the need for a specialized Collection Policy for unpaid court fines (as distinct from the existing collection policy which is applicable to other debts to the Region under By-Law A-0184(A)-2003-064)
b. To recommend that a new By-Law be enacted for court debts in accordance with the Write-Off Directive and Operating Guideline issued by the Ministry of Attorney General on February 25, 2008.

3. BACKGROUND

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.

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. However, in some cases, court debts will remain unpaid despite all efforts of enforcement.

4. ANALYSIS AND OPTIONS

4.1 Action On Unpaid Fines

At the time of transfer, unpaid fines totalling $13m were transferred to the Region's Court Services Branch for collection action. Many of these transferred cases had been outstanding for several years; in some cases the convictions dated back to the 1970s. 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.

In recent years, Court Services has been actively addressing collections in a number of ways. For example, 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 collection agencies, Nor-Don Collection Network Inc. (NCN) and Canadian Bonded Credits Limited (CBCL) under Proposal: P-06-79 for Collection Services.

4.2 Current Status of Accounts Receivable

Reports from the Provincial computer system (Integrated Court Offences Network or ICON) show that the Region currently has uncollected fines totalling $28.5 million. 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.

4.3 Debts to the Crown in Perpetuity

Although the Region is responsible for collecting outstanding court debts, only part of the collected revenue actually belongs to the Region, while other amounts are due to various agencies (including other municipalities, Ministries, etc.). However, regardless of the actual "recipient" for the outstanding amounts, court debts are debts to the Crown in perpetuity and they cannot be forgiven or written-off in the standard ways that other unpaid bills are routinely handled in business transactions.

Given the special status of court debts, municipalities have been seeking guidance and clarification from the Ministry of the Attorney General in order to establish the most practical and expeditious way to move forward.

4.4 Provincial Direction Now Received

In February 2008, the Ministry of Attorney General issued a *Provincial Offences Act* Write-Off Directive and Operating Guideline. This Directive and Operating Guideline applies to York and all other "Municipal Partners" that have entered into a POA Transfer Agreement with the Attorney General pursuant to *Part X of the Provincial Offences Act*. As a mandatory requirement, each Municipal Partner "shall create a formal Write-off Policy establishing protocols and thresholds under which POA accounts receivable shall be deemed to be uncollectible and therefore eligible for write-off."

The Ministry of Attorney General's Directive and Guideline recommends that 'the Municipal Partner should have its written policy and protocol for the collection of unpaid, defaulted POA fines and criteria for write-off of uncollectible amounts approved by Council or by the Council committee responsible for the administration of the POA courts via a municipal By-Law'.

4.5 Ongoing Administration

The Ministry of Attorney General's Directive and Guideline states that when a Municipal Partner has written off POA accounts receivable and purged the related case(s) from ICON, the Municipality must retain adequate records to support the possible future reinstatement of collection efforts. If a payment is subsequently received, the related case must be re-entered into ICON and the payment must be recorded as revenue, and distributed in accordance with the MOU.
Court Services will review POA accounts receivable semi-annually to identify potential write-offs, and annually to identify accounts receivable deemed uncollectible. These accounts will be recommended to Regional Council for write-off on an annual basis.

5. FINANCIAL IMPLICATIONS

The Ministry of Attorney General's POA Write-Off Directive and Operating Guideline bases 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 considered as revenue.

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. All other revenues are distributed to the area municipalities in proportions based on their respective annual Regional levy. The Collection Policy will have no impact on the revenue sharing agreement in place.

7. CONCLUSION

Based on the Ministry of Attorney General's Provincial Offences Act Write-Off Directive and Operating Guideline, staff recommends that Regional Council approve the attached Collection Policy for Provincial Offences Act Default Fines.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)