
HALDIMAND COUNTY

Report CLS-07-2019 Provincial Offence Act Write-Offs

For Consideration by Council in Committee on June 18, 2019



OBJECTIVE:

To seek approval to proceed with the write-off of uncollectible Provincial Offences fines in arrears from the period of 1995 - 2008 in accordance with Provincial Offences Act Fine Collection & Write-Off Policy No. 2018-04.

RECOMMENDATIONS:

1. THAT Report CLS-07-2019 Provincial Offence Act Write-Offs be received;
2. AND THAT staff be directed to write-off 1,152 Provincial Offences Act fines deemed uncollectable from the period of 1995 - 2008, totalling \$238,561.73, as listed in Attachment 2 to Report CLS-07-2019.

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Reviewed by: Evelyn Eichenbaum, Manager, Citizen & Legislative Services / Clerk

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

The continued annual write-off of uncollectible Provincial Offences Act fines will result in a more realistic reflection of the amount of arrears owing to Haldimand County while permitting both internal and external collection efforts to focus on fines where there is a greater likelihood of successful collection. Staff continue to review arrears to assess the feasibility of collecting on older fines through multiple collection methods and will utilize any applicable collection method, where appropriate. Despite staff's efforts and the full utilization of all tools available, there are fines that the County has been consistently unable to collect and it is deemed necessary to write-off what is not collectible.

BACKGROUND:

In March of 2001, Haldimand County assumed the responsibility for the administration of the Provincial Offences Act (POA) Court through a Memorandum of Understanding (MOU) with the Province of Ontario. At the time of transfer in 2001, over \$1.6 million in arrears was transferred to the County. The amount of fines in arrears has grown significantly since that time, which is consistent with the experience of other POA courts throughout the province. Haldimand County has utilized third-party collection of unpaid fines since 2007. An internal process of sending out letters prior to third parties being involved has been in place since 2012 and has proved successful. The province provided an additional collection tool in 2017 by expanding plate denial from parking offences to all outstanding driving-related fines. Staff also intend to pursue collection of certain larger arrears through Small Claims Court.

In 2018, Council approved the Provincial Offences Act Fine Collection & Write-Off Policy (Policy No. 2018-04) included as Attachment 1 to this report and approved the write-off of 1,255 pre-2001 POA fines transferred to Haldimand County that were deemed uncollectible and totalling \$253,107.60. The policy provides guidelines to establish protocols and thresholds to determine when fines are deemed uncollectable and eligible for write-off. The policy's intent is to ensure staff are demonstrating due diligence with respect to the collection and write-off of POA arrears and includes the requirement for staff to annually review outstanding fines to identify those that should be recommended for write-off, followed by a report to Council to obtain approval. Prior to the policy being in place, staff could only write-off fines for deceased persons where a death certificate had been received.

The policy applies to fines in arrears of eight years or more. All reasonable efforts continue to be made to collect any outstanding fine with the tools available and with the option to write-off only being used as a last resort measure where all other collection means have been exhausted.

Section 6.1 of the policy, as outlined below, stipulates the various collection activities that must have been applied and exhausted in order to provide sufficient evidence to consider recommending the write-off of an outstanding fine.

Collection Method	Timeframe
Notices of Fine and Due Date	1 letter for each individual fine that remains unpaid 45 Days after conviction and automatically generated by the Ministry of the Attorney General (MAG)
Consideration of an extended payment plan	Any time after conviction, upon request of the defendant and with approval currently at the discretion of the Justice of the Peace
Collections Notice of Unpaid Fine(s) (Internal collection letter)	1 letter sent out after the Notice of Fine and Due Date is sent out but prior to driver's licence suspensions and Third Party Collection Agency referrals
Suspension of driver's licence through the Ministry of Transportation (MTO), if applicable	Carried out approximately 30 days after the Notice of Fine and Due Date is sent out where no response received and failing all other attempts to collect
Licence Plate denial program through the MTO effective as of May 1, 2017, if applicable	Occurs 45 days after an unpaid Parking fine has been transferred to the Provincial Offences office and 66 days for unpaid Highway Traffic Act fines
Use of Third Party Collection Agencies	All unpaid accounts are referred to the County's Collection Agencies 60 days after conviction and are subject to additional attempts to find and contact the defendant
Transfer of outstanding fines to tax roll if name on unpaid fine and property is identical	If applicable and at the discretion of the Treasurer, any time after the above methods have been exhausted
Civil enforcement measures through Small Claims Court, if applicable	Applicable on larger accounts previously uncollectable by collection agencies. Must have a fine value that warrants the cost of this process or civil enforcement is deemed necessary for other business reasons

ANALYSIS:

As at December 31, 2018, the County's current accumulated Provincial Offences arrears sits at \$7,634,577 (the average of courts of similar annual charge volume size is approximately \$6.7 million). A large portion of these arrears (approximately \$1 million) includes additional fees that are required to be added to each fine once a defendant is convicted including a conviction fee of \$5.00 (MAG Fee), a defaulted fee of \$40 (MAG fee once the fine has gone unpaid for 66 days) and subsequently a collection fee which is added by the County once the account is transferred to a third party collection agency. Collection agency fees can range anywhere from 12 – 40 percent of the total owing, depending on whether the fine is in the name of an individual or a business and how difficult the fine has been to collect. The administration of Provincial Offences fines rests with the County's POA staff who continue to actively address collections using all resources available to them.

The 2018 approved write-offs have assisted with lowering the arrears from the pre-2001 transfer period; however, in their annual review, staff have identified additional defaulted fines that are considered candidates for write-off in 2019 and are presented in Attachment 2. Similar to the write-off list presented in 2018, the subject fines are defaulted fines where there is no ability to suspend a driver's licence for non payment. Additionally, further collection efforts would be unsuccessful due to factors such as:

- Incomplete/improper address in order to mail out notices or add the fine to the tax roll
- the individual is deceased but no death certificate has been received (verbal notification by a family member or an obituary in the paper are not sufficient evidence to permit staff to write-off a fine)
- there is no licence information in order to suspend a corresponding driver's licence
- the fine value did not meet the criteria to add it to the tax roll as the individual who received the ticket was not the sole owner of the property
- the fine was in the name of a company which has gone bankrupt and/or no longer exists

Staff are recommending that 1,152 Provincial Offences Act fines deemed uncollectable from the period of 1995 - 2008, totalling \$238,561.73 be removed from outstanding POA arrears to clearly identify cases where active fine collection efforts have ceased. The subject fines are not considered eligible for additional collection efforts through Small Claims court action as their small value would not offset the costs involved in pursuing civil enforcement proceedings. During their review, staff did identify and pull 36 significant fines which they will investigate further as possible candidates to pursue through Small Claims court.

Should Council direct staff to proceed with writing-off the subject fines, completion of their write-off is still subject to MAG's review. Upon Council's approval, a write-off list will be forwarded to the Ministry by its June 21, 2019 deadline. Once received, MAG will provide a Preliminary Write-Off Report to the POA Court office. Subsequently, POA staff will review the list and all cases identified for write-off will be purged from the Ministry's database (ICON) on October 11, 2019.

Debts to the Crown are owed in perpetuity and as such, although they may be written off for accounting purposes and purged from the Ministry's database (ICON), they are still owed until paid. Should payment be received after an account has been written off, POA staff must record the payment as revenue with supporting documentation and then disburse it in accordance with established process.

FINANCIAL/LEGAL IMPLICATIONS:

The County uses cash basis accounting for POA fines, meaning that the revenue is not recorded until the fine is paid, regardless of when the fine was imposed. The approved 2019 budget for POA fines revenue is \$400,000. POA fine collections have varied from year to year, mainly based on the number

of tickets issued, transfer of fines to the tax roll and occasional payment of large fines. This revenue is used to offset the fixed costs of staffing the POA Administration office.

A disclosure note in the County's annual financial statement reflects the current POA fine arrears. The arrears total of approximately \$7,634,577 as at the end of 2018 represents a decrease of \$139,804 from the end of year arrears total of \$7,774,381 reflected in 2017. The decrease is reflective of arrears approved for write-off by Council in 2018 while taking into account payments received and any additional fines that were added to the County's arrears in the same year.

STAKEHOLDER IMPACTS:

If approved, staff will advise MAG of Council's direction and will proceed with next steps as far as purging the written-off fines from the Ministry's database (ICON).

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Policy No. 2018-04 Provincial Offences Act Fine Collection & Write-Off Policy
2. List of fines recommended for write-off in 2019