
HALDIMAND COUNTY

Report CS-CL-07-2018 Provincial Offences Act Fine Collection and Write-off Policy



For Consideration by Council in Committee on June 19, 2018

OBJECTIVE:

To present a policy governing the collection and write-off of uncollectable Provincial Offences fines, seek approval to proceed with the write-off of pre-Year 2001 transfer fines in arrears and recommend additional collection methods to enhance the POA (Provincial Offences Act) office's approach in handling arrears.

RECOMMENDATIONS:

1. THAT Report CS-CL-07-2018 Provincial Offences Act Fine Collection and Write-off Policy be received;
2. AND THAT the Provincial Offences Act Fine Collection and Write-off Policy, included as Attachment #1 to Report CS-CL-07-2018, be approved;
3. AND THAT staff be directed to write-off 1,255 pre-Year 2001 transfer Provincial Offences Act fines that are deemed uncollectable, totalling \$253,107.60, as listed in Attachment #2 to Report CS-CL-07-2018.

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Reviewed by: Evelyn Eichenbaum, Clerk

Respectfully submitted: Karen General, CPA, CGA, General Manager of Corporate Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

The approval of a policy (the Policy) governing the collection and write-off of uncollectable Provincial Offences Act fines will result in a more realistic reflection of the amount of arrears owing to Haldimand County. The Policy is also intended to focus both internal and external collections efforts on pursuing fines where there is a greater likelihood of successful collection. Since 2001, when the Province downloaded responsibility for Provincial Offences Act Administration, there has been no write-off of outstanding fines, including a significant number inherited from the Province that date back to the 1990's (twenty to thirty years old). Staff intend to carry out an annual write-off process of arrears older than eight years that are deemed uncollectable. A more aggressive approach to internal collection of outstanding arrears through Small Claims Court actions is anticipated to result in payment on some fines that have typically been difficult to collect.

BACKGROUND:

As part of the “Who Does What” local services realignment, Provincial Offences Act fine revenue, net of Provincial administration costs, was provided to upper and single tier municipalities in the late 1990’s. Subsequently in March 2001, the County assumed direct responsibility for the administration and collection of POA fines previously handled by the Ministry of the Attorney General (MAG), at which time we also inherited \$1.6 million in outstanding fines dating back to the 1990’s. At the time of transfer, any prospect of collecting on these fines was deemed to be quite slim as MAG had not actively undertaken fine enforcement measures aside from the suspension of driver’s licences through the Ministry of Transportation.

Since 2001, as is the case with Provincial Offences courts across the Province, the County’s accumulated arrears have mounted annually, now totalling \$7,774,381 as at December 31, 2017. Of this total, \$6.2 million has accumulated in the post-transfer period. Staff are aware that 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 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. Accounts that have been worked on previously by a collections agency are assigned a higher percentage rate.

The issue of unpaid fines has been of concern to municipalities since taking over administration in 2001. Provincial Offences courts have struggled with the inability to collect fines using existing enforcement tools provided by MAG, while arrears continue to mount year over year. Provincially, the total arrears was at \$1.7 billion as at December 31, 2017. It is widely held that this inability of municipalities to enforce payment in the post-transfer period is attributed to the increased size and severity of fines, in addition to the lack of strong fine enforcement mechanisms, thereby enabling offenders to ignore judicial orders and contributing to the erosion of public confidence in the justice system.

The enforcement of Provincial Offences fines rests with the County’s POA staff who actively address collections using all resources currently available to them including:

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 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 MTO, if applicable	Automatically carried out 16-30 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 concurrently with driver’s licence suspension activities
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 is identical	If applicable and at the discretion of the Treasurer, any time after the above methods have been exhausted

Despite staff's collection efforts, there remain fines that the County has been unable to collect. Collection of these fines is either not practical or in some cases, simply not possible for reasons outlined within the analysis section of this report. With the significant increase in arrears, it is necessary to ensure that Haldimand County is utilizing any and all tools to reduce these arrears, and essentially write-off those accounts that are not collectable.

It should be noted that while the County's arrears are quite sizable, the arrears average among courts experiencing similar offence volumes, is approximately \$6.7 million.

ANALYSIS:

Provincial Directives on the "write-off" of Uncollectable Accounts

In 2008, MAG issued its Provincial Offences Act Write-Off Directive and Operating Guideline as a tool to assist its municipal partners in addressing POA fines deemed uncollectable. While POA staff are regularly permitted to write off fines for deceased persons throughout the year where a death certificate has been received, to date, Haldimand County has not adopted a formal write-off policy to address other POA fines where collection efforts have been exhausted.

MAG's Write-Off Directive and Operating Guideline is designed to allow municipal partners to write-off fines for accounting purposes only. It is important to note that the process of writing off fines does not absolve a convicted offender from the requirement to pay a fine. Debts to the Crown are owed in perpetuity and are never forgiven. Fines that are written off by a municipal partner are purged from the Ministry's database (ICON) and appear on a separate report that is provided, post-write off, to POA offices by MAG. This purge report becomes the municipal partner's tracking record of the fine still being owed in case a post-write off payment is received. It is accompanied by internally created documentation of the fines to be written off as part of the report to Council along with the physical ticket, which remains in the office.

POA Write-Off Policy for Haldimand County

Staff have recently looked at the feasibility of adopting a POA Write-Off Policy for the County as a way to address older POA accounts where there has been little or no progress on collection. This review was undertaken with MAG's Directive and Operating Guidelines in mind. With ticket volumes and court utilization time being low, it was an opportune time to take a closer look at POA arrears and to consider other avenues for fine enforcement vis a vis collection efforts and / or potential account resolution through write-off.

The development of a formal POA Write-Off Policy is a requirement of the MAG Directive should a municipal partner choose to write-off accounts. The draft Provincial Offences Act Fine Collection and Write-off Policy, included as Attachment # 1 to this report, was developed in consultation with Finance staff and is based on existing policies in other municipalities. It provides guidelines to establish protocols and thresholds to determine what and when fines will be deemed uncollectable and eligible for write-off. While staff are recommending the Policy apply to fines in arrears of eight years or more, all reasonable efforts will 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 as identified in Section 6.1 of the Policy.

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 its Memorandum of Understanding with MAG.

POA Pilot Project – Defaulted Pre-Year 2001 Transfer Fines

As part of the Collection and Write-Off Policy's development, POA staff embarked on a pilot project investigating the status of pre-Year 2001 transfer fines that would be eligible to write-off. All tickets related to defaulted fines dating from the years 1990 – 2000, were manually pulled and methodically reviewed by staff, alphabetically by surname from A through Z. Defaulted fines are cases where there is no ability to suspend a driver's licence for non payment such as: by-law, trespass to property and liquor licence charges or speeding tickets where the driver failed to produce a licence. Based on their review, staff concluded that all previous attempts to collect on these fines had been utilized and were unsuccessful. Any further attempts at collection 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 had 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

Due to the age of these arrears and factors that prevent further collection efforts, as previously noted, staff recommend that these fines, as identified in Attachment # 2 to this report, be removed from the inventory of outstanding POA arrears to clearly identify cases where active fine collection efforts have ceased.

Should Council direct staff to proceed with writing-off these fines, completion of their write-off is still subject to MAG's review. Upon Council's approval, a write-off list will be forward to the Ministry by its June 22, 2018 deadline. Once received, MAG will provide a Preliminary Write-off Report to the POA Court office by July 11, 2018. POA staff will have until September 7, 2018 to review the list.

The Rise in Provincial "Other" Arrears

As was noted by the General Manager of Corporate Services at the April 24 Council in Committee meeting, one area where staff have observed a concerning rise in the annual arrears recorded is in the Provincial "Other" category on MAG's POA reports. Using 2017 as a case study, staff manually reviewed the value and nature of new charges in this category and found that it included significant outstanding fines owed by both individuals and by corporations. These charges tend to be those laid by provincial agencies and other bodies including:

- Dog Owners Liability Act (DOLA)
- Ministry of Natural Resources (MNR)
- Society for the Prevention of Cruelty to Animals (SPCA)
- Ministry of Finance (MOF)
- Ministry of Labour (MOL)
- WSIB
- Compulsory Auto Insurance Act

During their review, staff found that while \$323,751 in new charges within the Provincial "Other" category were laid in 2017, \$48,339 was the total paid to the court in this category on any outstanding arrears for that year resulting in an overall arrears increase in this category of \$275,412. Within the current and antiquated Court software (ICON) provided by MAG, there is no way for staff to track a ticket lifecycle or to determine when or if charges laid in 2017 were actually paid to the court in that year. Staff are only able at this time to view the category as a whole and the change in fine values over time. The process of drilling down on individual fines is still, very much, a manual process for POA staff.

2017 Provincial “Other” charges showed multiple outstanding fines laid by the Ministry of Finance related to tobacco in the amount of \$25,000 per offence. Ministry of Environment fines were as high as \$2,500 per charge. A single Ministry of Labour Charge in 2017 was issued for \$81,000 and there were multiple outstanding fines for driving with no insurance levied on individuals that ranged from \$5,000 to \$12,000 per charge (note: a first offence can be as high as \$25,000 for an individual and a second offence can be as high as \$50,000). The information captured in this category for 2017 is a reflection of the types of charges laid in this category for years prior as well.

There are numerous factors that drive the increase in Provincial “Other” Arrears annually. One significant reason is that the fine values for offences that fall within this category have either increased over time or are so significant in value today that they are beyond an individual’s financial means to pay, particularly charges under the Compulsory Auto Insurance Act. Poverty and / or illness are the most commonly cited reasons why an individual will opt to drive without insurance and why some individuals will continue to drive while under suspension knowing they risk significantly higher fines or jail time if caught.

Further, defendants may have Extensions of Time in place with the Court to allow them more time to pay off their fines where there is financial hardship. There is no limit on the dollar value required to be paid on a fine in order to obtain an Extension of Time to pay and the granting of extensions is, at this time, at the discretion of a Justice of the Peace. Staff have observed that many defendants will pay small amounts on significant fines to obtain the extension but do not make subsequent payments until the extension runs out and they are back before a Justice of the Peace requesting a further extension. Until a fine is fully paid off, it continues to appear in the POA Arrears.

Strategy for Expansion of Fine Enforcement – Small Claims Court

While the Municipal Court Manager’s Association and MAG are both well aware of the challenge in collecting unpaid fines and continue to look at additional tools that can be provided to municipalities, staff have reviewed the various strategies and enforcement tools currently used by the County with the view of enhancing collection efforts in whatever way possible. Aside from the subject Policy, one additional area that has not been explored at the County but is utilized by other court jurisdictions is Civil Enforcement via Small Claims Court. This method can involve nominal costs to the municipality related to filing with the Court and requires that staff receive specialized Small Claims Court training.

Municipalities that utilize Civil Enforcement measures have found them to be successful revenue generators. Small Claims Court actions available to the County could include filing of Certificates of Default, Writs of Seizure and Sale, Wage Garnishments and Bank Account Garnishments. These actions can be taken when it is found that the defendant owns property or is currently employed and the fine in arrears is sizable enough to warrant the associated costs. Because Provincial Offences Fines are debts to the Crown and are owed in perpetuity, they are not subject to the Limitations Act of Ontario. As such, Small Claims Court proceedings can be undertaken at any time, regardless of the age of the fine.

As part of a more aggressive strategy aimed at addressing large outstanding fines, staff will be moving forward with adding Civil Enforcement measures to their collection methods. Staff are in the process of determining the full costs of filing in Small Claims Court and performing any necessary pre filing actions such as pulling credit reports. Once all information is gathered and staff have received the necessary training, larger fines will be reviewed to determine whether the value warrants the cost of this process or whether such civil action is deemed necessary for other business reasons (for example, setting a public expectation of enforcement of a particular type of fine.)

Given the amount of additional work anticipated in filing and pursuing arrears through Small Claims Court, this collection method is contemplated to be utilized as a last step after all other available collection efforts have been exhausted and third party collection efforts have failed. Where a third party collection agency has been unsuccessful at collecting on an account that meets the set dollar threshold, the account will be pulled from the agency and pursued by POA staff through Small Claims Court.

FINANCIAL/LEGAL IMPLICATIONS:

The County uses the cash basis of 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 2018 budget for POA fines revenue is \$400,000. This reflects a significant reduction from the 2017 budget of \$544,500. 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 imposed by certain Provincial agencies. 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 fines arrears. Although the figures have yet to be audited, the arrears total \$7,774,381 as at the end of last year, compared to \$7,474,693 reflected in the 2016 audited financial statements. Any means of enhancing collection of outstanding POA fines will provide additional revenue to offset the operating costs of the POA Administration function.

STAKEHOLDER IMPACTS:

If approved, staff will advise MAG of Council's direction and 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: Yes

ATTACHMENTS:

1. Draft Provincial Offences Act Fine Collection and Write-Off Policy
2. List of fines recommended for write-off