


TO: GENERAL COMMITTEE


SUBJECT: PROVINCIAL OFFENCES ACT COLLECTIONS POLICY

WARD: ALL

PREPARED BY AND KEY CONTACT: R. BATES, MANAGER OF COURT SERVICES, EXT. 4432 AND D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. #4421

SUBMITTED BY: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES 

GENERAL MANAGER APPROVAL: P. ELLIOTT-SPENCER, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES  C.M. J.P.E.S.

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the Provincial Offences Act (POA) Collections Policy establishing the protocols and thresholds under which POA accounts receivable shall be deemed uncollectable and therefore eligible for write-off consistent with the write-off directive and operating guideline published by the Ministry of the Attorney General and attached as Appendix "A" to Staff Report LCS002-16 be adopted.
2. That Section 1 of Schedule "C" of the Fees By-law be amended to add an administrative fee of \$25.00 for delinquent POA cases reaching the first collection agency placement stage.

PURPOSE & BACKGROUND

Report Overview

3. The purpose of this report is to recommend a policy that would formalize existing collection activities related to unpaid fines and would establish procedures for the write off of uncollectible Provincial Offences Act fines after reasonable efforts to collect have been undertaken, in accordance with the Ministry of the Attorney General's guidelines. The purpose of the Policy is to meet the requirements of the Ministry of the Attorney General to allow for the "write off" of specific uncollectible delinquent fines for accounting purposes only. The report also recommends the introduction of an administrative fee to recover costs associated with the processes undertaken by City of Barrie staff related to unpaid fines.

Background

4. The *Provincial Offences Act* (POA) establishes procedures for administering and prosecuting provincial offences that exist within Provincial legislation. Provincial offences are regulatory (non-criminal) charges, primarily laid by the police and by-law enforcement staff, including those committed under the Highway Traffic Act, Compulsory Automobile Insurance Act, Liquor Licence Act, Trespass to Property Act and City by-laws.

5. The *Provincial Offences Act* is divided into three (3) parts:
 - a) Part I of the Act governs minor offences such as moving violations, with a maximum fine of \$1,000. Defendants have 15 days from date of service to choose one of three options: pay the fine; attend court and plead guilty to the offence and make submissions as to the appropriate fine amount and/or time to pay; or request a trial;
 - b) Part II of the Act addresses parking infractions exclusively. Defendants have two options: pay the fine or request a trial; and
 - c) Part III of the Act covers more serious offences, usually with higher fines in excess of \$1,000 (e.g. driving while licence suspended, driving without valid automobile insurance, charges under Occupational Health & Safety legislation) with some offences having the possibility of jail time. Defendants are provided a summons with a court date. The outcome of the charge(s) is determined by the court. Outcomes could include convictions where a fine is levied, a term of probation is ordered or a jail term is given. Other outcomes may include withdrawals of the charge(s) by the prosecutor or dismissal of the charge(s) by the court.
6. A fine becomes a defaulted fine 15 days past the due date. Tools currently available for the collection of defaulted fines include licence plate suspensions, driver's licence suspensions, use of collection agencies, the ability to add specific types of unpaid fines to the property tax rolls under very limited circumstances (only where the person owing the fine is the sole owner of the property) and costly civil court processes (where assets are known).
7. Since the time of transfer, procedures have been developed to collect defaulted POA fines including the issuance of various notices as prescribed under the Provincial Offences Act, the use of collection agencies and where legislatively permitted, the plate denial process (expansion of this ability is pending MTO implementation anticipated in 2016) as well as driver's licence suspensions.

ANALYSIS

Provincial Offences Act (POA) Collections Policy

8. In February 2008, the Ministry of the Attorney General published a *Provincial Offences Act Write-Off Directive and Operating Guideline* for the handling of POA fines deemed uncollectable. The document provides guidance with respect to mandatory requirements and best practices regarding the write off of POA accounts receivable that have been deemed uncollectable.
9. The Ministry of the Attorney General's *Provincial Offences Act 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 a 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 the City of Barrie and the Inter-Municipal Services Agreement between the Barrie and Orillia Court Service Area partner municipalities.
10. The Ministry of the Attorney General's Guideline establishes a number of mandatory requirements for municipalities in order to write-off POA accounts receivable that have been deemed uncollectable once all reasonable efforts to collect unpaid, defaulted fines have been exhausted. The first mandatory requirement is that the municipality is required to adopt 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.

11. A review of other municipalities policies related to uncollectible fines was undertaken along with discussion regarding the challenges associated with such policies. The draft policy attached as Appendix "A" to Staff Report LCS002-16 is based on the best practices established in a number of municipally operated court administration centres. The proposed policy addresses all of the requirements of the Ministry of the Attorney General's Guideline (attached as Schedule "B" to the draft policy outlined in Appendix "A").
12. The proposed policy establishes specific conditions for a fine to be deemed uncollectible. The following conditions would be required for a fine not paid in full to be deemed uncollectible:
 - a) a clerical or court error was determined to have placed the account in default status and/or convicted, when the account, if properly administered, should have been completed;
 - b) Is at least six (6) years old;
 - c) Is not the subject of current civil enforcement action;
 - d) Is not holding a person's Driver's Licence or driving privileges under suspension in the Province of Ontario; and
 - e) Has undergone the applicable collection measures set out in Schedule "A" of the policy attached as Appendix "A" to Staff Report LCS002-16.
13. It also establishes that a fine is uncollectible if it is at least three (3) years old and one of the following conditions exists:
 - a) The person owing the fine is deceased and collection from the estate is impractical or has been unsuccessful;
 - b) The entity owing the fine is a business or organization that has claimed bankruptcy and collection efforts are unsuccessful or are impractical given that such efforts would not likely result in payment of the fine;
 - c) The entity owing the fine is a business or organization that is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical;
 - d) The person or entity owing the fine cannot be located;
 - e) In cases where an affidavit has been sworn and filed for matters convicted pre-transfer stating the fine was previously paid at a MAG operated Court pre-transfer where financial records no longer exist to establish the truth of the facts outlined in the affidavit or the matter should not currently be in default and the recordings of the proceedings are no longer available to establish the truth of the facts outlined in the affidavit;
 - f) The amount owed is \$25.00 or less per file;
 - g) Collection of the fine is required to be discontinued due to a legislative requirement, a court order or a Provincial or Federal government directive; or
 - h) The original charging document cannot be located to proceed further with additional collection efforts and/or other court processes.
14. The proposed policy also contains Schedule "A" - Provincial Offences Fines Collection Protocols. The Protocol outlines the types of activities that may be undertaken to collect outstanding fine amounts dependent upon the amount of the outstanding fine, as well as the particulars and the timelines associated with an action. Actions one through five include a legislated notice of fine and due date, driver's licence suspension if applicable and first, second and third collection agency placement. These actions are currently undertaken as part of the standard Court Services' collection processes.

15. The actions identified as six through ten, are activities that may be implemented for higher value outstanding fines, when it has been determined that the individual circumstances warrant the resources required to undertake such action. Staff in Court Services, in conjunction with staff in the Legal Services and Finance Departments has implemented these activities on a pilot basis when the outstanding fine amount and likelihood of collection are deemed sufficient after a cost/benefit analysis.

Administrative Collection Fee

16. In 2007, following approval by City Council and the Ministry of the Attorney General's office, POA staff initiated recovery of third party collection agency commission costs related to delinquent POA cases from the defendants. Limitations in the Integrated Court Offences Network (ICON) system initially hindered recovery efforts as ICON did not allow such costs to be added to delinquent cases.
17. Through a partnership with the Region of Niagara and an upgrade to ICON, the City of Barrie has benefited from the use of Court Administration Management System (CAMS) software developed by the Region which allows for the application of these third party collection agency commission costs to fines. Since the implementation of this cost recovery initiative, approximately 90% or more of third party collection agency commission costs have been recovered from defendants.
18. Section 391 of the *Municipal Act* provides a further opportunity to recover costs relating to the range of enforcement activities undertaken by POA staff for delinquent POA cases reaching the Certificate of Default stage. Section 391 (1) authorizes a municipality "(a) to impose fees or charges on persons, for services or activities provided or done by or on behalf of it; (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board".
19. Presently, additional fees are not imposed on POA cases reaching the enforcement or delinquency stage of the POA collections process. The implementation of an administration fee for such delinquent cases would provide an opportunity to offset operating costs relating to enforcement activities undertaken by POA staff and could increase net revenue available for distribution to the City of Barrie and its area municipal partners. A number of the Court Service Managers have implemented administrative fees to reduce their operating expenses and increase net revenue available.
20. It is anticipated that approximately 7,000 delinquent cases in 2015 will have been enforced at the first and second collection agency placement stage of the collections process. Currently, approximately the equivalent of one full time staff member is involved in the activities associated with collections (75% of a Barrie staff member and 25% of an Orillia staff member). The application of a \$25.00 administrative fee for delinquent POA cases going forward is anticipated to generate approximately \$140,000-\$150,000 in additional annual gross revenue for the municipalities in the Barrie and Orillia Court Service Areas. Collection activity may decrease going forward due to the recently decreasing charge volumes in some areas, so a conservative approach has been taken with this annual projection.
21. Due to the limitations of ICON, the implementation of the administrative fee will require additional manual efforts by POA staff to ensure the appropriate amounts are reflected in the ICON for all past due cases and to ensure the CAMS systems also reflects the correct amounts.
22. It is worthy of noting that the additional revenue generated from the administrative fee may be negated by the Ministry of the Attorney General's implementation of a 50%+ increase in the fee for Justice of the Peace sitting time and the 91.86% increase of other Ministry fees that became effective January 1, 2016.

ENVIRONMENTAL MATTERS

23. There are no environmental matters related to the recommendation regarding the proposed POA Collections Policy.

ALTERNATIVES

24. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could choose not to implement the proposed Provincial Offences Act (POA) Collections Policy.

Current collection activities would continue if the Policy is not approved. However, the Ministry of the Attorney General will not permit the write off of uncollectible Provincial Offences Act fines (after reasonable efforts to collect the unpaid fines have been undertaken), unless a policy is in place and in accordance with the Ministry of the Attorney General's guidelines.

Alternative #2 General Committee could alter the proposed Provincial Offences Act (POA) Collections Policy.

Although this alternative is available, the proposed provisions in the Policy reflect the requirements of the Ministry of the Attorney General and the best practices of a number of municipalities responsible for Court Service Management.

Alternative #3 General Committee could choose not to implement an administrative fee for the recovery of the City's internal costs associated with the collection of delinquent fines.

The implementation of an administration fee for delinquent fines provides an opportunity to offset operating costs relating to enforcement activities undertaken by POA staff, increasing net revenue available for distribution to the City of Barrie and its area municipal partners. The recovery of the City's costs through user fees is consistent with the City's cost recovery practices.

FINANCIAL

25. Municipalities record POA fines on a cash basis (outstanding fines are not set up as receivables), therefore there are no direct financial implications for the Corporation resulting from the proposed recommendation to implement a POA collections policy. The activities outlined in the Provincial Offences Act (POA) Collections Policy are currently being undertaken and would continue whether or not the Policy is approved. The purpose of the Policy is to meet the requirements of the Ministry of the Attorney General to allow for the "write off" of specific uncollectible delinquent fines for accounting purposes only.
26. Currently, it is estimated that approximately 1.1% (\$437,000) of the defaulted POA fines outstanding in the Barrie and Orillia Court Service Areas are attributable to fines that would be deemed uncollectible (ie. Has a value of \$25 or less or it is known the individual is deceased, corporation bankrupt, entity no longer operating and does not have any assets, person or entity cannot be located, etc. or the fine was placed in default due to an error).

27. The implementation of an administration fee for delinquent fines would provide an opportunity to offset operating costs relating to enforcement activities undertaken by POA staff and could increase net revenue available for distribution to the municipal partners in the Barrie and Orillia Court Service Areas. It is estimated that \$140,000-\$150,000 in costs could be recovered through the implementation of the administrative fee. The projected revenues associated with the administrative fee were included in the 2016 Business Plan. As the fee will require some manual effort to implement, involving the verification and balancing the two computer systems (ICON and CAMS), the application of the fee will be based on resources available.

LINKAGE TO 2014-2018 STRATEGIC PLAN

28. The recommendation(s) included in this Staff Report support the following goal identified in the 2014-2018 Strategic Plan:
- Responsible Spending
29. The implementation of an administrative fee will assist in the recovery of costs associated with the enforcement of unpaid and overdue POA fines.

APPENDIX "A"

POA FINES COLLECTION POLICY

PROVINCIAL OFFENCE ACT (POA) FINES

POA fines are debts owed to the Crown and cannot be forgiven or permanently written off. However, in some circumstances it is appropriate to remove the amount owing from the current database within ICON (or its successor). In order to have the fine removed from ICON, proper guidelines as provided by the Ministry of Attorney General must be followed and an internal policy developed to manage fines being considered for write-off or cessation of active collection efforts.

Any fine being considered for cessation of active collection efforts must be kept on file in-case payment is received for the fine sometime in the future, and the matter added back into the ICON database. Only files considered to be completed (fines paid in full) can be destroyed in accordance with the Ministry of Attorney General and the City's Records Retention Policy and associated schedules.

POLICY STATEMENT

To establish a policy for the responsible, systematic and efficient write-off or cessation of active collection efforts of uncollectable provincial offences fines in accordance with the Provincial Government's *"Write-Off Directive and Operating Guidelines"*, legislative requirements and Public Service Accounting Board accrual accounting standards.

PURPOSE

To ensure that uncollectable provincial offences fines are written-off or active collection efforts are ceased in a timely and consistent manner to properly represent the receivable accounts of the City of Barrie ("the City") and to identify cases for which active fine collection has ceased.

DEFINITIONS

"fine" means a provincial offences fine imposed against an offender in respect of a charge administered within the City's municipal court (the Provincial Offences Division of the Ontario Court of Justice) and includes the fine itself assessed by legislation or the Court and all applicable costs, surcharges and fees associated with such fine;

"ICON" means the Province's Integrated Court Offences Network or its successor, (the provincial database containing all provincial offences cases and fines); and

"write-off" means the removal of a fine from the City's receivables accounts and from ICON or its successor, and written-off shall include the cessation of collection activity.

BACKGROUND

The City operates its municipal court under agreement with the Attorney General for the Province of Ontario through the Memorandum of Understanding entered into in 1999. In this capacity, the City is responsible to make every effort to maintain the public's confidence in the justice system which includes the enforcement of the payment of fines that are imposed by the Court. The level of effort employed to enforce each fine payment is based on a variety of factors including the amount of the outstanding fine, the likelihood of successful enforcement of the fine, the age of the fine and the tools and resources available at the time to enforce payment of the fine.

The methods of fine collection available to the City include:

- Notices of Fine and Due Date;
- Written notices and phone calls to defendants via third party collection agencies;
- The suspension of driver's licences;
- The filing of judgments against defendants in Small Claims Court;
- The issuance of Writs of Seizure and Sale against property in which a defendant has an interest;
- The garnishment of a defendant's wages and/or bank accounts;
- The addition of outstanding fines to tax rolls; and
- Future Provincial initiatives such as the expansion of the Ministry of Transportation plate denial program and the Tax Refund interception initiative.

Despite these available collection efforts, there are fines that the City is unable to collect and there are situations where fine collection is not appropriate or practical. In such cases, the City needs to remove those fines from its inventory of outstanding receivables to properly reflect the receivables accounts and to identify cases for which active fine collection has ceased.

The provincial government's *Write-Off Directive and Operating Guidelines* (attached as Schedule "B") provides authority for municipalities to remove uncollectable fines from their receivables accounts through a write-off process. In order to do so, the City is required to establish a policy that sets out the criteria and procedures with respect to fines being written-off.

In addition, Section 290(3)(c) of the *Municipal Act* requires municipalities to, in preparing the annual budget, provide for revenues that in the opinion of the Treasurer are uncollectable.

Therefore, the following policy shall apply with respect to the identification and write-off of Provincial Offence fines the City is responsible for.

UNCOLLECTIBLE FINES AND WRITE-OFF PROCEDURES

1. A fine shall be subject to write-off once it is deemed uncollectable.
2. An uncollectable fine is one that is not paid in full and:
 - (a) a clerical or court error was determined to have placed the account in default status and/or convicted, when the account, if properly administered, should have been completed.
 - (b) Is at least six (6) years old;
 - (c) Is not the subject of current civil enforcement action;
 - (d) Is not holding a person's Driver's Licence or driving privileges under suspension in the Province of Ontario; and
 - (e) Has undergone the applicable collection measures set out in Schedule "A" of this policy;
3. Despite section 2 of this Policy, a fine is uncollectable if it is at least three (3) years old and one of the following conditions exists:
 - (a) The person owing the fine is deceased and collection from the estate is impractical or has been unsuccessful;

- (b) The entity owing the fine is a business or organization that has claimed bankruptcy and collection efforts are unsuccessful or are impractical given that such efforts would not likely result in payment of the fine;
 - (c) The entity owing the fine is a business or organization that is no longer in operation and has no assets against which the City can pursue a claim, making collection from the defunct entity impractical;
 - (d) The person or entity owing the fine cannot be located;
 - (e) In cases where an affidavit has been sworn and filed for matters convicted pre-transfer stating the fine was previously paid at a MAG operated Court pre-transfer where financial records no longer exist to establish the truth of the facts outlined in the affidavit or the matter should not currently be in default and the recordings of the proceedings are no longer available to establish the truth of the facts outlined in the affidavit;
 - (f) The amount owed is \$25.00 or less per file; or
 - (g) Collection of the fine is required to be discontinued due to a legislative requirement, a court order or a Provincial or Federal government directive.
 - (h) The original charging document cannot be located to proceed further with additional collection efforts and/or other court processes.
4. Each year, Court Services staff ("Court Services") will provide the City Treasurer with an accounting of the total number of fines/cases and associated monetary value to be written-off that year. In so doing, Court Services will:
- (a) Ensure that ICON, or its successor, is coded to write-off the fines/cases contained within the accounting provided to the Treasurer for write-off once approved by Council; and
 - (b) Retain on file documentation of each case identified for write-off including:
 - (i) a copy of the original Certificate of Offence or Part III information unless it cannot be located;
 - (ii) a record of the costs and fees included in the outstanding fine amount;
 - (iii) a documented record as to all collection activities undertaken with respect to the fine; and
 - (iv) the reason for the fine being written-off.
5. Once the cases/fines are removed from ICON or its successor, Court Services will provide the Treasurer with the itemized list from ICON detailing each fine/case written-off.
6. The Treasurer's annual report to City Council with respect to uncollectable accounts will include information regarding the total monetary value of the fines written-off in that year. The report will be in an approved format and a copy of the report, once approved by Council, will be included in the City's audit file.

SCHEDULES TO THIS POLICY:

- "A" – City of Barrie's "*Provincial Offences Fines Collection Protocol*".
- "B" – Province of Ontario "*Write-Off Directive and Operating Guidelines*".

SCHEDULE "A"

CITY OF BARRIE PROVINCIAL OFFENCES FINES COLLECTION PROTOCOL

	Action Taken	Fine Amount Outstanding			Particulars	Time Lines
		\$0.01 - \$500.00	\$500.01 - \$1,000.00	Greater than \$1,000.00		
1.	Notice of Fine and Due Date	X	X	X	Automated legislated notice sent reminding defendant of outstanding fine and due date – sent to the last address on the court records	Within 72 business hours of the conviction/sentence date
2.	Suspension of Driver's Licence (if applicable)	X	X	X	Suspension occurs upon expiration of legislated, or court-ordered due date on offences that are applicable for suspension (Driving or vehicle related offences)	Minimum of 15 days after default (due date) Files once suspended are held in the collection data base for 15 days prior to being released to one of the third party collection agencies
3.	First Collection Agency Placement	X	X	X	Notices sent and calls placed by assigned first placement collection agency where information exists to make these efforts (details below)	Files remain with the agency for a minimum of 9 months subject to any new court orders (extensions of time to pay fine orders, approved re-opening applications, appeals)
4.	Second Collection Agency Placement	X	X	X	Notices sent and calls placed by assigned second placement collection agency where information exists to make these efforts (details below)	Files remain with the agency for a minimum of 9 months subject to any new court orders (extensions of time to pay fine orders, approved re-opening applications, appeals)

5.	Third Collection Agency Placement	X	X	X	Notices sent and calls placed by assigned third placement collection agency where information exists to make these efforts (details below)	Files remain with the agency for a minimum of 9 months subject to any new court orders (extensions of time to pay fine orders, approved re-opening applications, appeals)
6.	Certificate of Default filed in Small Claims			X*	Anytime after 15 days from default	Anytime after 15 days from default
7.	Writ of Seizure & Sale			X**	Applicable where property is known to exist & judgment obtained Notice is optional	Generally at the same time as the Certificate of Default is filed
8.	Wage Garnishment			X**	Applicable where employment information is known Notice of Judgment is sent to defendant	Immediately after Certificate of Default is filed
9.	Bank Account Garnishment			X**	Applicable where banking information is known Notice of Judgment is sent to defendant	Immediately after Certificate of Default is filed
10.	Adding a fine to the Tax Roll of a Municipality	X***	X***	X***	Applicable where Section 441.1 of the Municipal Act applies	Anytime after 15 days from default

First Collection Agency Placement – One or more letters are mailed to the defendant setting out the amount(s) owed, requesting payment in full. Costs of collections are added prior to the electronic file being sent to the agency. All monies collected are paid to the City and the agency invoices the City for services rendered. All correspondence is pre-approved by the City Clerk. Phone calls are made to defendants within legislative guidelines where contact information can be located. Files remain with the First Placement Agency for a period of a minimum of nine (9) months. Some files may remain longer if requested by the agency due to current existing collection efforts being made or payment plans are in place.

Second Collection Agency Placement – One or more letters are mailed to the defendant setting out the amount(s) owed, requesting payment in full. Costs of collections are added prior to the electronic file being sent to the agency. All monies collected are paid to the City and the agency invoices the City for services rendered. All correspondence is pre-approved by the City Clerk. Phone calls are made to defendants within legislative guidelines where contact information can be located. Files remain with the Second Placement Agency for a period of a minimum of nine (9) months. Some files may remain longer if requested by the agency due to current existing collection efforts being made or payment plans are in place.

Third Collection Agency Placement – One or more letters are mailed to the defendant setting out the amount(s) owed, requesting payment in full. Costs of collections are added prior to the electronic file being sent to the agency. All monies collected are paid to the City and the agency invoices the City for services rendered. All correspondence is pre-approved by the City Clerk. Phone calls are made to defendants within legislative guidelines where contact information can be located. Files remain with the Second Placement Agency for a period of a minimum of nine (9) months. Some files may remain longer if requested by the agency due to current existing collection efforts being made or payment plans are in place.

* Certificate of Default filed if potential for Writ or Wage/Bank Account Garnishment exists.

**A Judgment/Debtor Examination may be warranted where assets and employment are unknown but suspected and the outstanding fine is large (ie. \$2,000 and greater)

***Section 441.1 of the Municipal Act states that upon the request of a municipality that has entered into a transfer agreement under Part X of the *Provincial Offences Act*, the treasurer of a local municipality may add any part of a fine for a commission of a provincial offence that is in default under section 69 of the *Provincial Offences Act* to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine and collect it in the same manner as municipal taxes.

Notice of Judgment – A letter is mailed to the defendant, after a Certificate of Default (Judgment) has been filed with the Small Claims Court and a garnishment of the defendant's wages or bank accounts is being processed. Notices are optional where a writ of seizure and sale are filed against any property.

Note: Available methods noted as #1 - #5 above in Schedule "A" have been successfully implemented and form part of the City of Barrie Court Services' standard collection procedures. Available methods noted as #6 - #10 above in Schedule "A" are reviewed for implementation after a cost benefit analysis has been undertaken.

SCHEDULE "B"

Provincial Offences Act

Write-Off Directive and Operating Guideline

Provincial Offences Act Unit
POA and Strategic Planning Branch
Court Services Division
Ministry of the Attorney General
February 25, 2008

PROVINCIAL OFFENCES ACT

WRITE-OFF DIRECTIVE AND OPERATING GUIDELINE

PURPOSE:

1. To ensure that Municipal Partners administering the Provincial Offences Act (POA) courts can demonstrate that they have exercised due diligence with respect to the write-off of POA accounts receivable and made all reasonable efforts to minimize the value of POA accounts receivable recommended for write-off.
2. To provide guidance with respect to best practices regarding the write-off of POA accounts receivable that have been deemed uncollectible.

SCOPE AND APPLICATION:

1. This Directive and Operating Guideline applies to all Municipal Partners that are subject to a POA Transfer Agreement and the related Memorandum of Understanding (MOU) with the Attorney General.
2. This document has been developed to provide Municipal Partners with guidance as to the minimum requirements they are expected to meet in order to write-off POA accounts receivable. While the decision to write-off POA accounts receivable that have been deemed uncollectible is a local decision to be made by a Municipal Partner once all reasonable efforts to collect unpaid, defaulted fines have been exhausted, a Municipal Partner must follow the directives contained herein in order to ensure that the Province of Ontario, its Ministries and Agencies will not attempt to collect any portion of the written off funds from the Municipal Partner, including funds related to dedicated fines, fees or surcharges, subject to clause 4 below.
3. The Recommended Best Practices contained in this document have been developed to provide Municipal Partners with guidance with respect to best practices regarding the write-off of POA accounts receivable that have been deemed uncollectible.
4. Where a Municipal Partner has written off POA accounts receivable and any portion of those accounts receivable are subsequently paid, the requirements of the POA Transfer Agreements and the Provincial Offences Act, including requirements with respect to the remittance of certain funds to the Province of Ontario upon collection, continue to apply.

PRINCIPLES:

1. All reasonable effort to collect fines imposed under the POA must be made before any consideration for write-off is made. For purposes of this policy, "write-off" means the cessation of active collection.
2. In accordance with the requirements of the MOU, an equal effort to collect unpaid fines, regardless as to whether they are retained by the municipality or paid to a third party, must be demonstrated.
3. POA accounts receivable may be written off for accounting purposes only and do not absolve a convicted offender from the requirement to pay a fine, as debts to the Crown are owed in perpetuity and are never forgiven.
4. Collection activities of written-off accounts can be resumed when conditions change, as fines imposed by POA Courts are debts owed to the Crown and therefore are not subject to the Limitations Act.

5. Municipalities must retain adequate records after an account is written-off in order to support the possible future reinstatement of collection efforts.

MANDATORY REQUIREMENTS:

General

1. 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.
2. Equal treatment and effort regarding the collection of all POA fines must be applied, without regard to whether the resulting revenue will be retained by the Municipal Partner or remitted to another third party.
3. With the exception of minor underpayments (i.e., less than \$25 outstanding), POA accounts receivable marked for write-off must have been in default for a minimum of 2 years.
4. Action to collect accounts receivable outstanding less than 2 years from individuals for whom a death certificate has been received may be undertaken should the Municipal Partner's Collections Policy and Protocol specifically require recoveries from Estates.
5. Where a Municipal Partner decides to write-off POA accounts receivable, the reasons for the write-off must be transparent and justifiable and must not place the administration of justice into disrepute.
6. Each Municipal Partner must have exhausted all reasonable and appropriate measures and efforts to collect unpaid, defaulted fines prior to the consideration of recommending a write-off.
7. The documentation in support of a Write-off recommendation must, at a minimum, include the following:
 - Copy of original Certificate of Offence or Part III information;
 - Record of additional costs and fees included in the outstanding amount;
 - Documentation as to all collection activities undertaken; and
 - Reason the write-off is recommended

Ongoing Administration

1. Where a Municipal Partner has written off POA accounts receivable and any portion of those accounts receivable are subsequently paid, the Municipal Partner must remit to Ontario, in a timely manner, all monies received in respect of fines, surcharges and fees that are payable to Ontario pursuant to subsection 165(5) of the Provincial Offences Act.
2. Where a Municipal Partner has written off POA accounts receivable and the related case(s) have been purged from ICON and any portion of those accounts receivable are subsequently paid, the case(s) related to the payment received must be re-entered into ICON (see related ICON instructions in Appendix A) and the payment must be recorded as revenue, with supporting documents, and distributed in accordance with the MOU.

3. Where, under the terms of the POA Transfer Agreement, a Municipal Partner proposes the contracting out of any services related to the performance of its obligations under the POA Transfer Agreement, the Municipal Partner must ensure that the contract provides that the person or organization performing the contract will meet the mandatory requirements and have due regard for the recommended best practices contained within this directive and operating guideline.
4. On an annual basis, each Municipal Partner must provide the POA Unit of the Ministry of the Attorney General with information regarding the total value of all fines deemed uncollectible and written-off during the previous municipal fiscal year (i.e., January 1st to December 31st) as part of the Annual Performance & Progress Report to be submitted no later than June 30th of each year.

RECOMMENDED BEST PRACTICES:

1. 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.
2. Examples of reasonable and appropriate measures and efforts to collect unpaid fines prior to the consideration of recommending a write-off include the following collection activities, applied progressively. While the actual measures and efforts to be employed by a Municipal Partner should be documented in its Write-off Policy, the following steps provide guidance as to what is reasonable and appropriate:
 - Timely creation and distribution of all notices and communications;
 - Progressively severe delinquency notices, including letters via registered mail;
 - Consideration of extended payment plan;
 - Application of available administrative sanctions;
 - Specialized collection assistance; and
 - Civil fine enforcement mechanisms.
3. Accounts receivable should be reviewed semi-annually to identify potential write-offs and annually to identify accounts deemed uncollectible and to be recommended for write-off.

RESPONSIBILITIES:

Municipal Partners:

- Setting thresholds and formalization of own write-off policy based on the principals and requirements of this document;
- Specifying the format and reporting detail for write-offs recommendation submissions; and
- Final approval to cease active collection and write-off a fine.

Court Managers:

- Coding and processing in ICON;

- Document collection efforts made prior to the recommendation of a write-off; and
- Monitor outstanding accounts receivable on a semi-annual basis for potential write-offs.

Ministry of the Attorney General:

- Provision of continued access to ICON or its successor;
- Timely and regular scheduling of ICON purges; and
- Assistance to municipalities in dealing with other Provincial Ministries

ADDITIONAL INFORMATION:

If you have any questions or require further information regarding this document, please contact Pam Elliott, Provincial Offences Act Unit, at (416) 326-2590 or Pamela.Elliott@ontario.ca.