

Clause 6 in Report No. 9 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on May 19, 2016

6

Provincial Offences Act Collections

Committee of the Whole recommends:

1. Receipt of the presentation by Lisa Brooks, Manager, Initiatives, Performance Improvement and Collections, Court Services (Court Operations).
 2. Adoption of the following recommendation contained in the report dated April 28, 2016 from the Regional Solicitor:
 1. Council approve the updated Provincial Offences Act Collection Policy.
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Report dated April 28, 2016 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

1. Council approve the updated *Provincial Offences Act* Collection Policy.

2. Purpose

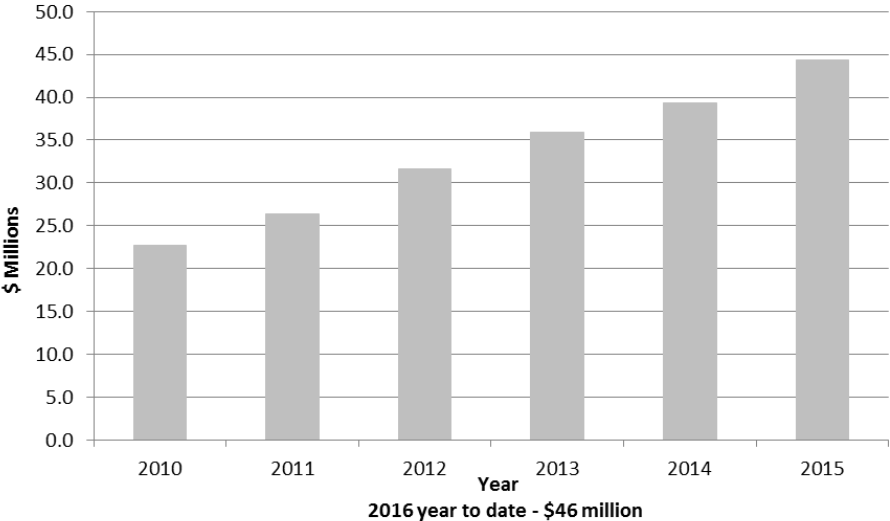
This report recommends amendments to the Region's *Provincial Offences Act* Collection Policy to implement an updated collections strategy.

3. Background

The *Provincial Offences Act* (the "POA") gives defendants charged with offences three options; to pay the fine, dispute the charge through early resolution, or request a trial. If a defendant fails to choose one of these options or fails to pay the fine imposed by the court following early resolution or trial, the fine goes into default. On average, 20,000 of all court ordered fines (20 per cent of all fines registered annually) default and require collection efforts by Court Services.

Unpaid fines are subject to a variety of enforcement tools. Licence suspension and plate denial are the most effective tools for collection but not all POA fines are subject to these enforcement mechanisms. Approximately 59 per cent of all fines currently in default are not eligible for licence suspension or plate denial and require the use of other collection tools. The Region currently has a total of \$46 million in unpaid fines.

Figure 1
Total Unpaid Fines

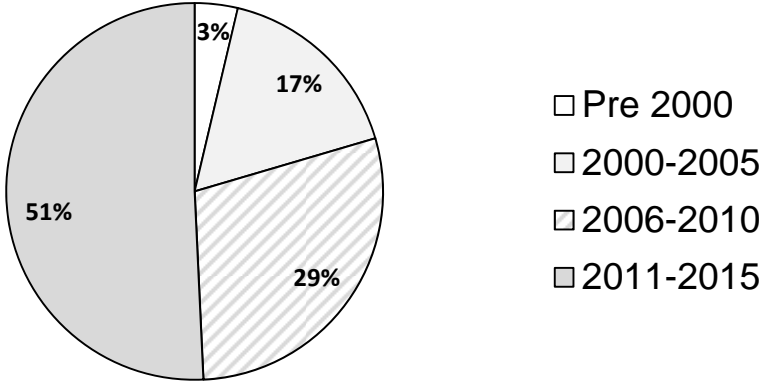


The *Limitations Act* does not apply to unpaid POA fines

POA fines are debts to the Crown and therefore remain in default until paid. At any point in the collection process, Court Services can apply various enforcement tools for the purpose of fine collection regardless of when the fine was imposed.

When the POA court program was transferred to the Region in 1999, the Province also transferred \$13 million in unpaid fines. Approximately \$4.4 million has been written off since that time as the fines were deemed uncollectable. Currently, \$1.7 million remains of the pre-1999 fines. Older fines can be more difficult to collect but collection tools can be applied to all fines regardless of age in POA accounts receivable.

Figure 2
Percentage of Fines in Default by Enforcement Year



4. Analysis and Options

Proposed amendments to the Region's *Provincial Offences Act* Collection Policy will strengthen the collection of defaulted fines

The POA Collections Policy was approved by Council in 2008. The purpose was to increase the collection rate and provide a forecast of collectable fines. Given that the rate and amount of unpaid fines continue to increase, Court Services proposes to implement a revised collections strategy through amendments to the Policy to enhance the collection tools available. The strategy will include improved use of collection agencies; collection of fines through property tax rolls; use of civil enforcement tools and cost recovery for collection activities.

Increasing collection agency fees and the number of collection agencies will increase the collections of older fines

Court Services currently uses four collection agencies to assist in the collection of unpaid fines. A recent Request for Proposal was issued to increase the total number from four to ten collection agencies, resulting in additional resources for the collection of older fines.

Collection agency fees are added to the POA fine and are fully recoverable from the defendants. Fees are not paid to the collection agency unless the fines are successfully collected so there is no direct cost to the Region. The commission rates and collection targets for collection agencies will be increased when new agencies are retained to encourage more aggressive collection efforts and maximize recovery of default fines.

Staff will also implement enhanced monitoring controls and conduct regular meetings with the collection agencies to ensure targets are achieved. The intent is to create a more competitive environment among the collection agencies to drive increased collection rates.

The Region is partnering with local municipalities to collect default fines through property tax roll

Section 441.1 of the *Municipal Act, 2001* allows for the collection of POA fines through property tax rolls where the debtor is the sole owner of the property. Under the *Municipal Act* unpaid fines must be added to the local tax roll by the Treasurer of the local municipality and may be collected on behalf of the Region in the same manner as other tax arrears. Local municipalities have the ability to add administrative fees under their local bylaw to recover any additional costs and retain this fee when the fine is collected.

POA courts in other jurisdictions have had success with the collection of fines through local property tax rolls and have further expanded efforts through agreements with partnering municipalities. The City of Markham is currently using property tax roll to collect defaulted municipal bylaw fines. Court Services continues to work with the City of Markham to explore the opportunity of expanding property tax roll to all eligible POA fines.

It is estimated that less than one per cent of all unpaid fines will be eligible for collection through the property tax roll due to the requirement under the *Municipal Act* that the debtor must be the sole owner of the property. It is, however, an additional collection tool that may enhance the collection of default fines. Court Services staff have met with all local municipalities and are currently finalizing agreements with the City of Vaughan, Town of Newmarket, Town of Aurora, Town of East Gwillimbury and Town of Georgina.

Civil enforcement methods can also be used to assist in the collection of POA fines

The POA allows for enforcement of unpaid fines through the civil justice enforcement process. A writ of seizure and sale (lien) can be issued and filed against the debtor. Where a debtor owns property, the writ binds the property regardless of joint or sole ownership. Fine revenue will generally be realized within five years if the mortgage is renewed or the property is sold. In addition an unpaid fine can also be collected through the garnishment of wages or bank accounts. Court Services staff are exploring opportunities to move forward with this collection sanction but the use of such tools may be limited as it requires access to employment and banking information which must be obtained through a court order.

Civil enforcement carries some financial risk to the Region as it requires payment of court imposed fees at the time proceedings are commenced, with no guarantee of full cost recovery. As a result of this financial risk, civil enforcement would only be used in limited circumstances when the amount of the fine merits the expenditure and risk.

The implementation of Bill 31 will strengthen collections for fines that have been enforced to licence suspension

On June 2, 2015, the Ontario Legislature passed Bill 31-*Making Ontario Roads Safer Act*. The Bill includes various amendments to the *Highway Traffic Act* in relation to public road safety and fine collection. Under Bill 31, all POA fines that enter into default and are processed to licence suspension will also be processed to plate denial by the Ministry of Transportation. Plate denial will take effect January 1, 2017. Changes to technology required for this enforcement are not expected to be completed until the spring of 2017, so the timing and financial impact of these changes on the Region's collection efforts is difficult to forecast at this time.

A collection fee can be introduced to recover the Region's collection costs

Under the POA, a late fee is automatically applied to all fines that enter into default. When payment for a defaulted fine is received, this fee is retained by the POA court program to help offset the cost of collections. In November 2015, the Province increased the default fee from \$20 to \$40. The increase applies to all fines that default after January 1, 2016. Despite the increase, this fee does not provide full cost recovery for collections. Prior to the increase, municipal court managers had advocated for an increase to \$60 in order to achieve full cost recovery.

In addition to the default fee imposed under the POA, section 391 of the *Municipal Act, 2001* allows a municipality to enact a bylaw to recover costs relating to the enforcement activities involved in the collection of default POA fines. Staff are exploring options to add a fee to unpaid fines to fully recover the costs of fine collection administered directly by the Region. The fee would be added to the \$40 default fee imposed under the POA. Such a fee has been imposed in several other provincial offences courts.

Link to key Council-approved plans

Enhancing the collection of default fines supports the Strategic Plan initiative of managing the Region's finances prudently, ensuring a fiscally prudent and efficient Region.

5. Financial Implications

Enhanced collection of unpaid fines through the proposed collection strategy will increase fine revenue, but not all fine revenue is retained within the provincial offences program. The \$46 million in defaulted fines includes approximately \$7 million in victim fine surcharge which is collected by the court program but payable to the Province.

When the Bill 31 amendments come into effect in January 2017, approximately \$10 million in defaulted fines will be eligible for the expanded enforcement through licence plate denials.

Once the collection strategy is implemented, Court Services will have better tools to forecast fine revenue. Despite these enhanced collection efforts, some portion of default fines will be deemed uncollectable and ultimately recommended for write-off.

6. Local Municipal Impact

The POA collection strategy will strengthen the collection of municipal bylaw and parking default fines; thus, potentially increasing revenue for local municipalities.

7. Conclusion

The amended *Provincial Offences Act Collections Policy* will maximize the collection of unpaid POA fines and maintain the integrity of the justice system by utilizing all legislative tools available. Court Services will continue to work with the local municipalities to finalize agreements and implement the collection of fines through property tax roll.

For more information on this report, please contact Harry Fok, Director Court Operations at ext. 73302

The Senior Management Group has reviewed this report.

April 28, 2016

eDocs 6745522

Accessible formats or communication supports are available upon request



Provincial Offences Act Collection Strategy

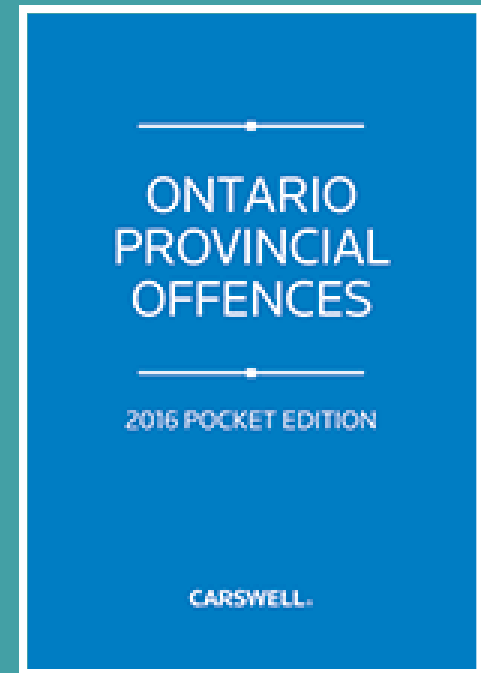
Presentation to
Committee of the Whole

Lisa Brooks

May 12, 2016

Purpose

- Provide an overview of the *Provincial Offences Act* collections strategy
- Recommend amendments to the existing *Provincial Offences Act* collection policy



Background

- The *Provincial Offences Act* provides defendants three options:
 - pay the fine
 - dispute the charge through early resolution
 - request a trial
- Failing to choose an option or pay the fine imposed by the court will result in the fine entering into default



1

OR



2

OR



3

Background

- 20 % of all court ordered fines default and require collection effort
- Only 41% of fines currently in default are eligible for licence suspension

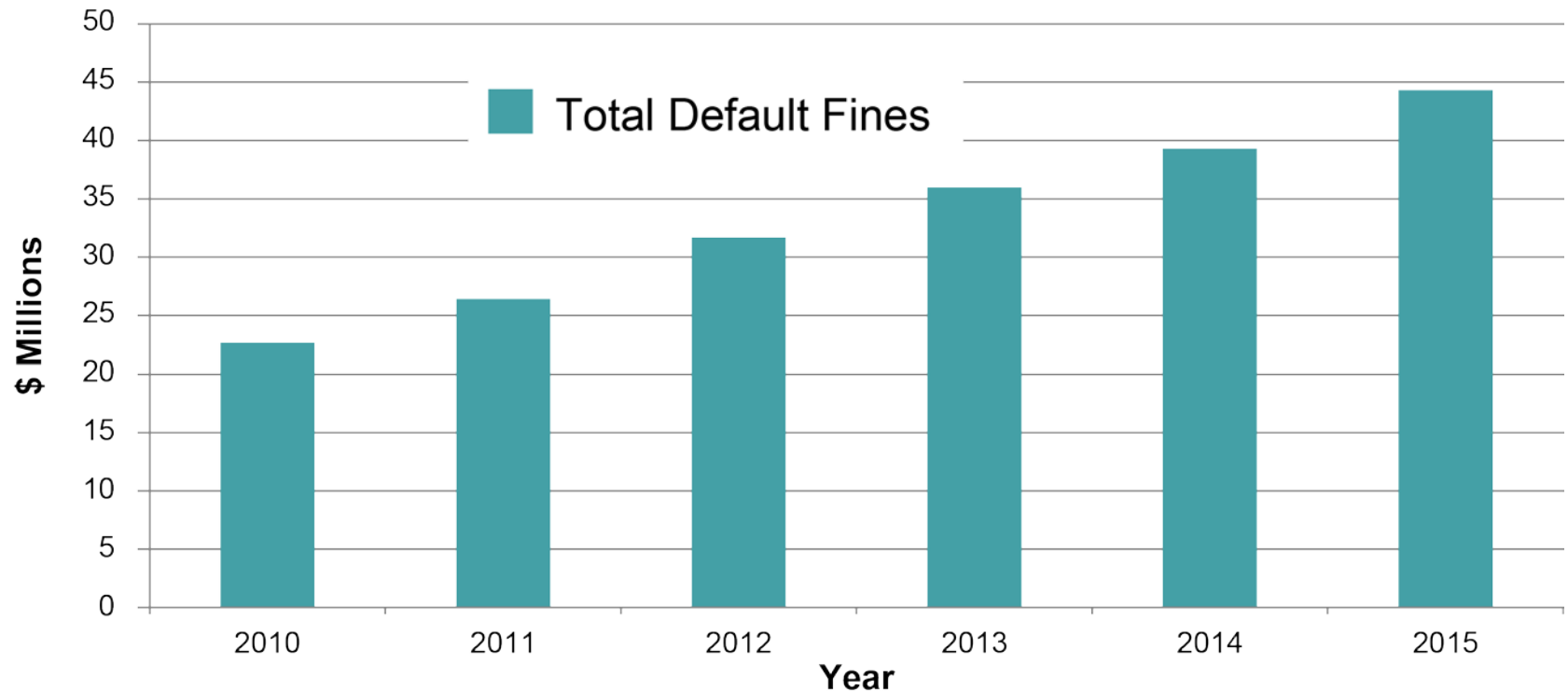


20%



41%

Defaulted Fines Continue to Increase in York Region



*As of December 31, 2015 there was approximately \$45 Million of court fines unpaid

The *Limitations Act* does not apply to POA fines

- POA fines remain in default until paid
- Court Services can apply various enforcement tools for the purpose of collection regardless of when the fine was imposed



Provincial Offences Act Collection Strategy

A collection strategy has been put in place to maximize default collection efforts and increase fine revenue. The strategy addresses two key areas:

- Increase defaulted fine collection rate
- Increase collection rate for defaulted aged receivables

Provincial Offences Act Collection Policy

An update to the current policy would:

- Improve strategic use of collection agencies
- Permit use of property tax roll collection
- Include civil enforcement



Collection Agencies

A more competitive and aggressive approach with collection agencies will maximize recovery of default fines

- Increase from 4 to 10 collection agencies
- Increase commission rates for agencies
- Stronger monitoring of collection results



Property Tax Roll Collection

- The *Municipal Act, 2001* (s. 441.1) allows *Provincial Offences Act* fines to be collected through local Property Tax Roll where there is sole ownership
- Local municipalities can add an additional user fee under their local bylaw
- Court Services staff are working with local municipalities to partner in this initiative and finalize agreements



Civil Enforcement

- Civil enforcement will be utilized in limited circumstances and may include:
 - Property Liens – Writ of Seizure and Sale
 - Garnishment of Wages
- Court staff are committed to working with debtors through various payment plan options



Bill 31

Transportation Statute Law Amendment Act

- The Act will strengthen POA fine collections by expanding all licence suspensions to include plate denial
- Plate denial is anticipated to be implemented by Spring 2017



Provincial Offences Act Collection Fees

- A collection fee can be added to POA fines under the *Municipal Act* (s. 391) to recover the Region's collection costs
- A similar fee has been imposed in several provincial offences courts

Court Services staff are exploring the potential for an additional collection fee as part of the 2017 budget process

Recommendation

Court Services is seeking approval to update the *Provincial Offences Act* Collection Policy in order to maximize revenue and maintain the integrity of the justice system.

Next Steps

- Staff will continue to work with local municipalities to finalize agreements for collection of fines through property tax roll
- Staff will explore the opportunity to add an additional collection fee for full cost recovery

Next Steps

- A communication strategy is being developed to inform our residents
- The POA collection strategy will be implemented by year end
- Continue to monitor implementation of Bill 31- *Transportation Statute Law Amendment Act*

Discussion

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