



ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

Provincial Offences Act – Unpaid Fines  
***A \$Billion Problem***

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White Paper

11/1/2011



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## EXECUTIVE SUMMARY

Unpaid *Provincial Offences Act* (POA) fines are a billion-dollar problem, and the numbers are growing exponentially. Approximately one-third of all POA fines are not paid. Due to historically weak penalties and ineffective collection methods, many offenders who choose not to pay their fines have never been held to account. Targeted and effective measures are needed to reach these defaulters.

Unpaid POA fines is a complex problem comprising a broad range of offences, a broad range of penalties, a large and diverse number of defaulters, a broad range of stakeholders, and a broad range of collection successes by jurisdiction. Strategic analysis of the issue is difficult, however, due to lack of data and difficulties accessing the data that does exist. Governments and ministries continue to operate in silos, missing opportunities to pursue more effective information sharing and collaboration.

One-third of fine defaults are related to the *Highway Traffic Act*, while another third is related to the *Compulsory Auto Insurance Act*. The vast majority (91%) of fine defaulters are Ontarians. The greatest concentration of fine defaults is in Toronto, followed by the County of Stormont, Dundas & Glengarry in eastern Ontario.

There has been varying success with the following collection tools:

- Licence plate suspensions
- Driver's licence suspensions
- Use of collection agencies
- Ability to add unpaid fines to property tax rolls
- Repeal of the statutory limitations period

Despite the ability to use the above listed collection tools, problems remain. Nearly \$1 billion in unpaid fines remains uncollected, and that amount continues to grow. The major challenges are:

- Lack of available data
- Lack of coordination within the government
- Need for greater stakeholder engagement
- Lack of alternative penalties
- Need for simple, flexible payment methodology
- Lack of incentives to pay
- Lack of follow-up
- Need for better enforcement powers

These problems are not new. Municipalities, courts, law enforcement agencies, and other stakeholders have been advocating for decisive action for years. The persistent problem of unpaid POA fines undermines the justice system, frustrates law enforcement officers and municipal fine collection agents, and denies municipalities and the provincial government desperately-needed revenues.

To address these issues, OAPSB recommends, based on stakeholder consultations, the Government of Ontario:

- Provide better data for better decision-making
- Improve inter-ministry collaboration and information sharing
- Embrace stakeholders, by holding regular discussion forums and acting on their suggestions



- Allow courts to assess ability to pay, and offer alternative sentences
- Provide better "customer" service to those persons paying fines
- Provide more "carrots and sticks," including discounts for early fine payment, stiffer late penalties, and payments in accordance with the chronological order of sentencing
- Help municipalities to follow up on outstanding fines ("ask them, and they might pay")
- Institute stronger, meaningful collection sanctions for fine defaulters, including broader driver's licence and licence plate denial, vehicle impoundment, and garnishment of income tax refunds

This growing problem is wholly inappropriate in a functioning democracy. Comprehensive corrective action is overdue.

In these challenging times, this persistent (and growing) \$1 billion problem simply cannot be ignored, especially when solutions and stakeholder motivation are both so readily at hand.

## INTRODUCTION

As of July 2010, the last year for which statistics are available, there were nearly 2.5 million unpaid POA fines<sup>1</sup> totalling close to \$1 billion, owed largely to Ontario municipalities. That number has grown, and outstanding fines now total more than \$1 billion. The enormous magnitude of this delinquency undermines public safety, the rule of law, and accountability. It clearly also has significant financial impact on municipalities.

In 2009, the Ontario Association of Police Services Boards (OAPSB) began seriously advocating for corrective action regarding unpaid POA fines. In response to those advocacy efforts, the Hon. Rick Bartolucci, Minister of Community Safety and Correctional Services at the time, requested in 2010 that OAPSB prepare a white paper on the matter. Attorney General Bentley encouraged this initiative, and OAPSB readily agreed.

## METHODOLOGY

This white paper was developed over 16 months as follows:

- Step 1 – determine required information;
- Step 2 – solicit POA data from MAG and MFOA (Municipal Finance Officers' Association);
- Step 3 – analyze POA data;
- Step 4 – share preliminary data and interview stakeholders; and
- Step 5 – write and distribute the white paper.

Stakeholder consultation was undertaken over the summer of 2011. OAPSB representatives identified key stakeholders from a variety of backgrounds and conducted telephone or email interviews over a period of several weeks. Interviews were informally structured, but stakeholders were asked to respond to four main questions:

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<sup>1</sup> ICON database, as of July 2010 (\$954,338,261.10 total owing for 2,370,864 fines).



- In your opinion, what are the main challenges with the current POA fine collection system?
- What do you think is working? What do you think isn't working?
- What recommendations would you make to improve the collection of unpaid POA fines?
- Is there anything else we should consider as we move forward with developing our recommendations?

After the interviews were complete, recommendations were consolidated and areas of stakeholder consensus emerged. This primary research data was later supplemented with secondary research mainly from the media; government reports, news releases and legislation; and court cases. This forms the basis of this white paper.

### POA Fines – An Overview

*Provincial Offences Act (POA)* offences are non-criminal offences, which are normally punishable with an out-of-court fine. Charges are usually laid by police. Typically, a person who receives a ticket has 15 days to either pay the fine or arrange a court date. If the person does nothing, the matter goes before a justice of the peace. If the person is convicted *in absentia*, they are mailed written notice that the fine must be paid within 30 days. If the fine remains unpaid, governments have some tools at their disposal to compel payment (including referring the matter to a collection agency, adding the fine amount to the property tax bill, or in some instances suspending plates or driver's licences).

Provincial Offences Act (POA) offences are non-criminal, relate to Provincial statutes, and include:

- *Highway Traffic Act* violations, such as:
  - Speeding
  - Careless driving
  - Not wearing a seatbelt
- *Compulsory Automobile Insurance Act* violations, such as:
  - Lack of insurance
  - Invalid insurance or fake insurance card
  - Failing to produce an insurance card upon request
- Controlled substances violations, such as:
  - *Liquor Licence Act* violations
    - Selling alcohol to a minor
    - Public intoxication
  - *Smoke-Free Ontario Act* violations
- *Trespass to Property Act* violations, such as:
  - Unlawfully entering a premises
  - Failing to leave a premises when directed to do so
- *Environmental Protection Act* violations, including:
  - Improper disposal of waste
  - Discharge of contaminants
- Violations of other Acts, including:
  - *Occupational Health and Safety Act*
  - *Dog Owners' Liability Act*
  - *Fire Protection and Prevention Act*



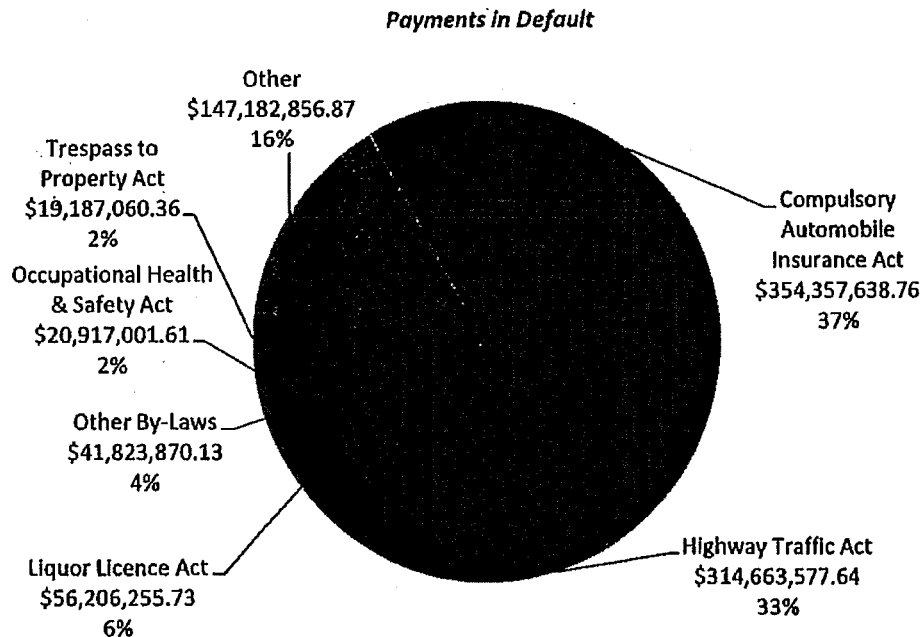
- Provincial Parks Act
- Retail Business Holidays Act
- Safe Streets Act
- Municipal by-law violations, including:
  - Noise by-laws
  - Animal care by-laws
  - Traffic by-laws
  - Parking by-laws

Most POA offences result in out-of-court fine payments. While none of these offences are considered "criminal," many—such as careless driving or possessing an invalid or false insurance card—are quite serious and can have concrete impacts on individual and community safety.

### The Problem - Unpaid POA Fines by the Numbers

#### The \$1 Billion Problem – What Kind of Offences?

Of the \$1 billion in outstanding POA fines, approximately one-third relate to *Compulsory Automobile Insurance Act* convictions, another third to *Highway Traffic Act* convictions, and another third to other convictions (including violations of the *Liquor Licence Act*, *Occupational Health and Safety Act*, and *Trespass to Property Act*).



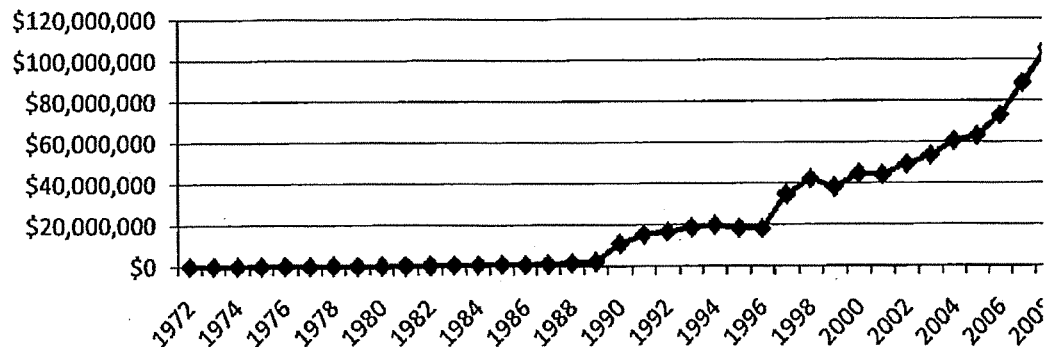
Source: ICON Database, as of July 2010

### Growing Year by Year

The problem of unpaid POA fines has been growing for decades. Over the years, the problem has been growing steadily worse. Today, approximately one-third of fines ordered are not collected.<sup>2</sup> In some municipalities these rates reach levels of one-half (Toronto) and even two third (Stormont, Dundas and Glengarry). Due to historically limited collection sanctions, many offenders who choose not to pay their fines have not been held to account.

In 1970, total defaulted fines in the province amounted to less than \$1,000 for that year. By 1980, just after the *Provincial Offences Act* came into effect, that number had increased to over \$140,000. By 1990, when the numbers began taking off, it was nearly \$11 million that year. Then between 1999 and 2002, as municipalities became responsible for administering *Provincial Offences Act* offences and fine collection (and became recipients of the bulk of fine revenue), defaults started to increase exponentially. In 2009, the last full year for which data is available, a staggering \$100 million in fines ordered for that year alone were in default.

*Payments in Default per Year*



Source: ICON Database, as of July 2010

### Ontarians Are Not Paying

Contrary to popular perception, about 91% of outstanding POA fines are owed by Ontario defaulters—over \$870 million. This amount is nearly equivalent to the entire annual budget of the OPP.<sup>3</sup> The issue of POA defaults is not a problem of out-of-province ticket recipients taking advantage of jurisdictional enforcement challenges, as they make up only 10% of the total outstanding.

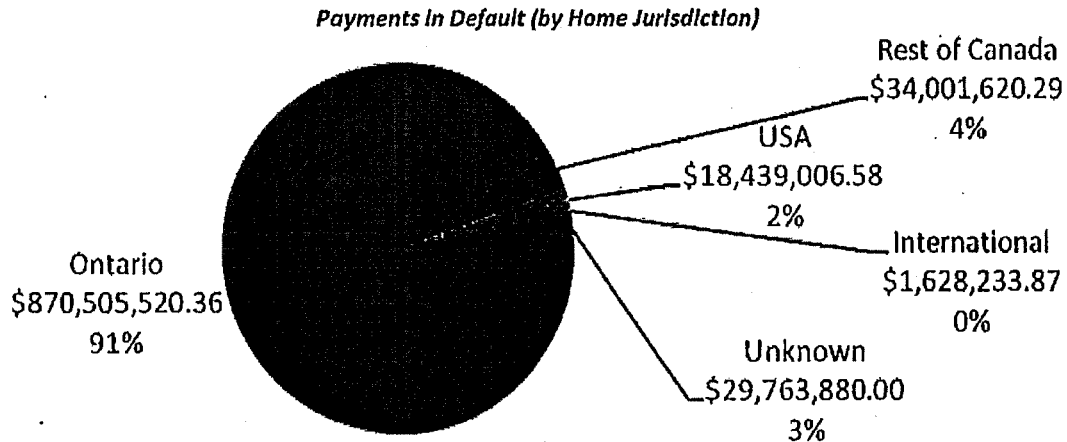
Of over \$34 million owed from defaulters from other Canadian provinces, over half is from Quebec. (Alberta comes a distant second with about \$4.5 million.) Most US defaulters reside in nearby and

<sup>2</sup> ICON database, as of July 2010 (based on data for years 2001-2009).

<sup>3</sup> Government of Ontario, Ministry of Finance. "Ministry of Community Safety and Correctional Services - THE ESTIMATES, 2011-12 - Summary." Queen's Printer for Ontario (19 April 2011), online: <http://www.fin.gov.on.ca/en/budget/estimates/2011-12/volume1/MCSCS.html>.



bordering states—Illinois (\$1.4 million), Michigan (\$5.6 million), and New York (\$4.4 million).<sup>4</sup> Less than \$2 million is owed by defaulters from countries other than Canada and the USA.



Source: ICON Database, as of July 2010

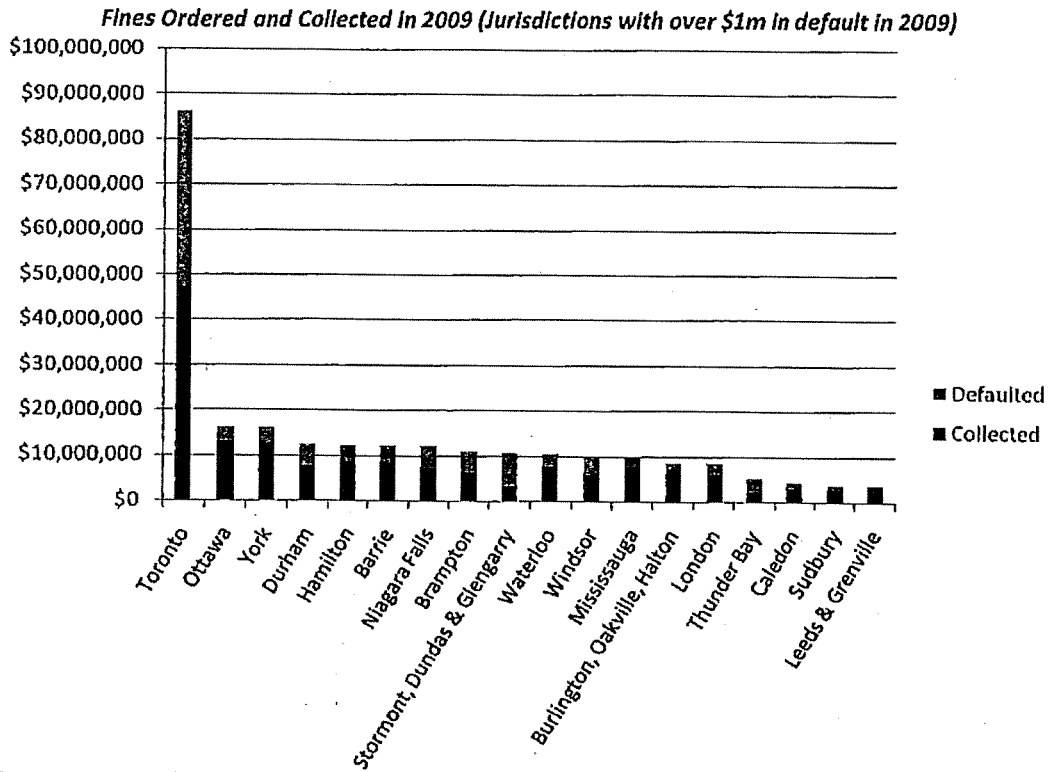
### Regional Breakdown

Of Ontario defaulters, there is significant regional variation. From 2009 convictions alone, Toronto courts are owed the most—\$36 million in outstanding fines. To put this in perspective, this is the projected shortfall for the Toronto Transit Commission in 2012.<sup>5</sup> (While some of these defaulted fines will eventually be paid, the current outstanding balance of unpaid fines in Toronto alone is over \$300 million.)

Amounts owing to other jurisdictions for 2009 are smaller, due to population differences and regional factors. Outside of Toronto, the Counties of Stormont, Dundas & Glengarry are owed the most in unpaid fines, with over \$7 million—meaning that less than one-third of fine amounts ordered there were actually collected.

<sup>4</sup> ICON database, as of July 2010.

<sup>5</sup> CTVToronto.ca. "TTC struggles to combat \$39-million shortfall in 2012." CTV Toronto (7 June 2011), online: <http://toronto.ctv.ca/servlet/an/local/CTVNews/20110607/TTC-budget-shortfall-110607/20110607/?hub=TorontoNewHome>.



Source: ICON Database, as of August 18, 2010

### The Problem Summarized

Clearly, the problem is significant and the numbers continue to grow. Each year, municipalities across the province are losing out on millions of dollars that could be invested in public works, community safety, and other vital municipal programs. In some instances, they must look to other levels of government to assist them.

The absence of effective current collection measures, together with the passage of time, results in greater difficulties in collecting court-ordered fines.

This is not simply a Toronto problem—or just an urban one. The inability to collect outstanding POA fines has a serious detrimental impact on municipal finances, and impacts the quality of life of all Ontarians in a very real way. Decisive action is needed.

### Reasons for Growth in Unpaid Fines

The problem of unpaid POA fines is evident; the question remains why they continue to grow. There are several reasons.



1. The legal and social landscape in Ontario and Canada is very different today than it was three decades ago, when the *Provincial Offences Act* came into force. The need to quickly and efficiently address regulatory infractions has led to increasing reliance on fines or "Administrative Monetary Penalties" (AMPs) rather than going to court and facing other penalties (e.g., imprisonment).
2. Then between 1999 and 2002, municipalities became responsible for administering *Provincial Offences Act* offences and fine collection, as well as becoming recipients of the bulk of fine revenue. Municipalities were not necessarily prepared or resourced to assume these functions. This lack of resources was not theoretical, and has resulted in insufficient defaulter information and court delays.
3. For many years in Ontario, there was a shortage of justices of the peace to preside over municipally administered provincial offences courts. Fines remained uncollected as cases slowly worked their way through the system.<sup>6</sup> The number of cases in the system increased, and the longer time periods made it more likely that some fines would become uncollectable. Even now, stakeholders suggest that it can take over six months to resolve a POA Part I case in court, and that timeline is growing.
4. The cost of pursuing unpaid fines through civil enforcement is a deterrent, as POA Courts pay the same filing and issuing costs as the general public (despite the fact that they are enforcing court orders). Due to limited resources, many POA Courts abandon pursuit through legal means — and so these fines simply do not get paid. Over the years, the number of fines issued has also been increasing. Municipalities and their police laid 57% more and the OPP 20% more POA charges overall between 1999 and 2007. (The discrepancy between OPP and municipal police charges can be explained through a number of factors, including the fact that municipal-policed areas have experienced higher population growth than OPP-policed areas).<sup>7</sup> Since available processing resources did not increase correspondingly, this has created additional backlogs and pressures in the system, resulting in greater numbers of unpaid fines.
5. As well, many fines simply cost more today. While in the late 1970s the highest fine for most environmental offences was a mere \$5,000,<sup>8</sup> today such fines can theoretically reach into the millions of dollars (though the median remains around \$10,000<sup>9</sup>). In 2010, the cost of many road fines in Ontario increased, with some doubling (or more).<sup>10</sup> This will have a significant effect on unpaid fine numbers in years to come as individuals have greater difficulty paying these higher fines.

<sup>6</sup> McCarter, Jim. Chapter 3.07, *2008 Annual Report of the Office of the Auditor General of Ontario*. Queen's Printer for Ontario (2008), online: [http://www.auditor.on.ca/en/reports\\_en/en08/307en08.pdf](http://www.auditor.on.ca/en/reports_en/en08/307en08.pdf).

<sup>7</sup> McCarter, Jim. Chapter 3.07, *2008 Annual Report of the Office of the Auditor General of Ontario*. Queen's Printer for Ontario (2008), online: [http://www.auditor.on.ca/en/reports\\_en/en08/307en08.pdf](http://www.auditor.on.ca/en/reports_en/en08/307en08.pdf).

<sup>8</sup> *R. v. City of Sault Ste. Marie* [1978] 2 S.C.R. 1299.

<sup>9</sup> Nimonik.ca. "Environmental Fines in Canada, 1990-2009." Nimonik.ca (1 September 2010), online: [http://www.nimonik.ca/images/canada\\_environmental\\_fines.pdf](http://www.nimonik.ca/images/canada_environmental_fines.pdf).

<sup>10</sup> Ontario Ministry of Transportation. "Penalties Toughened for Serious Traffic Offences." Queen's Printer for Ontario (10 December 2009), online: <http://news.ontario.ca/mto/en/2009/12/penalties-toughened-for-serious-traffic-offences.html>.



6. Increasing fines and other forms of penalties (e.g., loss of demerit points), some stakeholders suggest, has had the unintended consequence of incenting a small number of repeat and serious offenders who owe large sums of fines to resist payment, as they have much more at stake should they choose to interact with authorities and pay their fines.
7. In addition, from a collections perspective, while the level of fines and arrears has increased exponentially, the tools available to collect these fines have remained relatively static. They have undisputedly not increased to meet the scale of fines sought to be collected. In fact, information necessary to easily locate offenders has been made more rather than less difficult to obtain because of administrative changes. These changes are mainly to do with the fact that the level of government collecting the fine is (municipal) no longer the one that maintains the information databases on drivers and vehicles (provincial); i.e., the information tools made available to the municipal collector are less than the tools available to the provincial collector.
8. Collection is often seen as being about money rather than justice – therefore it is not considered as “essential” to the justice system and not given the attention or resources necessary to be fully effective.

While these policy shifts seem to have been intended to make the administration of these offences more efficient and fines more appropriate, they were not accompanied by the necessary operational and legislative changes and supports. The result has been an unintended and exponential growth of fine defaults.

#### PROGRESS TO DATE

Despite the magnitude of the situation, there has been some progress in addressing the problem of unpaid POA fines. Available collection tools have had varying success, and include:

- Licence plate suspensions
- Driver's licence suspensions
- Use of collection agencies
- Ability to add unpaid fines to the property tax rolls
- Repeal of the statutory limitations period

#### Licence Plate Suspensions

Licence plate denial has been, undisputedly, a very effective tool to compel payment of certain fines and obligations. It is currently used in very limited circumstances, restricted to the enforcement of:

- Unpaid parking tickets (POA Part II offences)
- Unpaid red light camera fines, and
- Highway 407 ETR tolls, fees, and interest.

If an individual defaults on a parking ticket, the municipality notifies the Ministry of Transportation (MTO) to suspend licence plate privileges. The threat of further tickets and fines is usually persuasive. In addition, Ministry of Attorney General (MAG) retains the added surcharge of \$20 to cover the costs of administration of each defaulted fine. When the individual goes to renew or purchase the licence plate



sticker, he or she must pay the MTO purchase or renewal fee plus any accumulated fines, fees, and surcharges.

Until payment is made, the individual cannot register a vehicle, purchase a licence plate, renew a plate, or purchase plate validation stickers. This creates a practical incentive for defaulters to pay their fines, lest they risk accumulating further fines and escalating their legal difficulties.

The penalty is:

1. **suitable** because it is effective in directly impacting an individual's livelihood and is comprehensive because, with few exceptions, POA offenders own or operate a vehicle
2. **feasible** because the infrastructure is already in place to administer it efficiently and effectively
3. **acceptable** because it is seen as a reasonable way of balancing public interests and individual rights.

Not surprisingly, many stakeholders strongly urge the government to look at expanding licence plate denial to other defaulted POA fines.

### Driver's Licence Suspensions

Driver's licence suspension has also shown some success, but this penalty is subject to stricter limitations than licence plate suspensions. Like licence plate denial, this penalty is restricted to specific offences, including:

- *Highway Traffic Act* offences, such as:
  - Speeding and other common driver-related offences
  - Driving while under suspension
  - Accumulating too many demerit points
- *Criminal Code* offences, such as:
  - Driving while impaired
  - Conviction for a criminal driving offence
- Operating a motor vehicle without insurance
- Family responsibility and support arrears
- Failure to pay a court judgment

As with licence plate suspension, driver's licence suspension can be persuasive. The penalties for driving with a suspended licence are severe (between \$1,000 and \$5,000 for a first offence, and/or up to six months in jail). As well, a \$150 fee is payable upon licence re-instatement as an added penalty that is collected and retained by the MTO.

Stakeholders point out that, unfortunately, this sanction is not effective for offences where a driver's licence number is unavailable (either because the ticketing officer did not fill it in, or because the licence was not with the offender at the time). Anecdotal evidence also suggests that this penalty is ineffective for some offenders, who will simply drive without a licence. Of note, evidence suggests that such drivers are more likely to leave the scene of a crime if involved in an accident, resulting in more hit-and-runs.<sup>11</sup>

<sup>11</sup> Paralegal Society of Ontario. *Provincial Offences Act Streamlining Review*. [Paralegalsociety.on.ca](http://Paralegalsociety.on.ca) (29 January 2009), online:



Unlike a sticker, which is visible, an offender could drive with a suspended licence undetected until they commit another driving infraction. This could indicate a lack of public acceptance of this penalty, and a need for further public education.

### Collection Agencies

Between 1999 and 2002, the Ontario government transferred enforcement of provincial offences to municipalities, allowing them to hire collection agencies to pursue outstanding fines and fees. Collection agencies compete for contracts, and incentivizing them to perform better and collect more. Typically underperforming collection agencies are replaced.<sup>12</sup>

The use of agencies has improved collection rates and removed the administrative burden from municipalities themselves.<sup>13</sup> The stigma of having a debt in collection, combined with negative financial consequences (on an individual's credit rating and borrowing ability) and the specialized, persuasive tactics used by agencies, have measurably improved collection rates at little cost to municipalities. From a public education perspective, the use of collection agencies sends a clear message that skipping out on an unpaid ticket is the moral equivalent of skipping out on any other bill.

While collection agencies have been successful in recovering unpaid fines, many of the tickets at issue are years or even decades old. Stakeholders caution that it may be nearly impossible to track down these individuals today, and so a significant number of fines will remain uncollectable.

### Using Property Tax Rolls

In June 2010, amendments to Ontario's *Municipal Act* came into force allowing municipalities to collect unpaid POA fines by adding them to an offender's property tax bill as tax arrears. The bill must be paid in full, or else the individual risks eventually forfeiting their property to the municipal government for unpaid taxes (as properties may be registered for tax sale once taxes are three years in arrears). Because the default penalty can be so severe, this tool has the potential to be very effective.

Importantly, as currently constructed, the law provides that the person owing the fine must be the sole owner of the property. This tool cannot be used where there are two or more owners of a property (such as joint ownership by a husband and wife), or when the offender is not a property owner. Some stakeholders and municipalities support an amendment to allow fines to be added even if the debtor owns only a part of the property.

Although this tool is very new, initial indications are that it has been successful to some extent, but works better in some jurisdictions than others. Last year, the City of Brampton identified 38 unpaid fines, totalling \$210,000, and sent letters to violators indicating the amounts would be added to their

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<http://www.paralegalsociety.on.ca/pdf/POA%20Streamlining%20Consultation%20Paper%20-%20Jan%202029-09.pdf>.

<sup>12</sup> Rodrigues, Hugo. "Agency does 'fine' job on unpaid tickets." *Woodstock Sentinel-Review* (May 15, 2011), online: <http://www.woodstocksentinelreview.com/ArticleDisplay.aspx?e=3121641>.

<sup>13</sup> Rodrigues, Hugo. "Agency does 'fine' job on unpaid tickets." *Woodstock Sentinel-Review* (May 15, 2011), online: <http://www.woodstocksentinelreview.com/ArticleDisplay.aspx?e=3121641>.



tax bills.<sup>14</sup> In less than a year, over \$50,000 has been collected, according to the city.<sup>15</sup> In Toronto, over one million dollars has been collected using this sanction.

The drawbacks to this method are:

1. it is limited because
  - a. while it provides a strong incentive, it is not necessarily a timely incentive, as it takes up to three years to collect fines in this manner (whereas vehicle plates must be renewed at least once every two years); and
  - b. it is not comprehensive; not all POA offenders own real property (many more own cars than real property, and as noted earlier by far the majority of offences are vehicle-related). Even when offenders do own property, they must, under current law, own it exclusively for the municipality to collect.
2. It is not always feasible both for reasons noted in 1 and because unless the municipality collecting the fine is also the municipality collecting the taxes then the latter has little incentive to collect the fine. This situation also exists in some two-tier municipalities. For example, lower-tier Brampton administers POA while upper-tier Region of Peel administers property tax. Agreements need to be negotiated and put in place to ensure municipalities owed fines receive their fair share of defaulted fines levied on tax rolls whether within the same upper-tier (e.g. between Lambton County and Sarnia) or not (e.g., between Toronto and Gravenhurst).
3. It does not necessarily always enjoy public acceptability. Seizing someone's home because they have not paid a fine could be perceived by some as draconian and excessive by some.

### Repeal of the Statutory Limitation Period

Legislative amendments in 2009<sup>16</sup> repealed a two-year statutory limitation on enforcement and collection of unpaid POA fines. Previously, municipal officials had to file a Certificate of Default to secure their enforcement options. This has reduced both costs to municipalities and burdens on the higher courts, which no longer need to deal with the same volume of certificates. (Note that once a certificate is filed, it becomes an order of the court and can be enforced like any other court order, meaning that there is no time limitation on enforcement.)

The increased time period has relieved some of the administrative congestion faced by municipal governments, while making it easier to recover fines owed from people who, for example, had moved or otherwise could not be reached in the original two-year period. Notably, neither the federal Criminal Code nor corresponding legislation in most other provinces limit the fine enforcement period at all.

### OUTSTANDING CHALLENGES

Despite this recent progress, problems remain. Nearly \$1 billion in unpaid fines remains uncollected, and that amount continues to grow. The reasons are complex, but can be summarized as a lack of resources dedicated to fine collections and enforcement, coupled with a lack of effective collection tools to enforce court orders. Put simply, more tools and resources are needed.

<sup>14</sup> Douglas, Pam. "New tool to collect debt." *Brampton Guardian* (March 1, 2011), page 1.

<sup>15</sup> Douglas, Pam. "New tool to collect debt." *Brampton Guardian* (March 1, 2011), page 1.

<sup>16</sup> *Good Government Act, 2009*, SO 2009, c. 33.



Two major (and interrelated) challenges exist which, if addressed, would provide significant return on investment with low policy risks. They are:

1. Lack of coordination within the government
2. Need for operational changes to better align the authority of municipalities with their responsibilities

There are a number of secondary challenges that also need to be addressed, but should not hold up action on the first two, including:

3. Lack of incentives to pay
4. Lack of available data
5. Need for greater stakeholder engagement
6. Lack of alternative penalties
7. Need for simple, flexible payment methodology
8. Development and sharing of best practices in POA collections

### **#1. Lack of Coordination within the Government**

Stakeholders are in agreement that there is a need to get various ministries together to see the bigger picture and acknowledge their role in finding and implementing a solution to the enormous unpaid POA fine problem. This is the single largest barrier to progress on this issue. Provincial government ministries are not working together as they should, and action remains uncoordinated. Ministries, in particular the Ministries of Transportation (MTO) and the Attorney General (MAG), continue to operate in departmental silos, and no one is taking active ownership of the issue. Leadership and direction is needed to sort through the different priorities and compel ministries to cooperate, not compete or remain isolated.

There is a sense among stakeholders that MAG is unconcerned with the matter of monies owed, as its primary interest is administrative justice. This seems inconsistent with the POA system as a whole, since most penalties are in fact financial—the original purpose of which was to ensure administrative and legal system efficiency.

Data sharing and cooperation is essential. According to stakeholders, however, MAG's old court case management system does not allow cross-referencing with the Ministry of Transportation's (MTO's) database. As a result, unpaid fines cannot be directly and easily tied to MTO-led penalties, such as licence plate and driver's licence renewals as offenders cannot be easily found and or fines not collected through the plate denial system. Furthermore, many individuals cannot be found because their information is spread across a number of fragmented government databases. These current technical limitations continue to cause great frustration among stakeholders involved in the POA system. Stakeholders are united in calling for an integrated, functional, and modern system to allow the POA fine collection system to function effectively.

Even within a single ministry, MTO, stakeholders are in agreement that coordination of data could be improved. For example, an owner's suspended licence is not tied to the licence plate renewal, even if he





or she is the primary or exclusive driver of that vehicle. An officer running a check on the plate will never know that the individual is driving with a suspended licence (unless the driver is pulled over and the officer demands the driver's licence.). MTO could greatly aid in the collection of unpaid fines—and in keeping our streets safer—by coordinating and associating this kind of data. A complete business process map would help illustrate where these gaps and risks arise.

Stakeholders urge that datasets should be linked so that, for example, ICON records are automatically updated with current addresses from MTO's database so that municipalities can then locate offenders and collect from them. Due to privacy concerns, such consolidation needs to be approached very carefully in order to ensure legitimacy in the eyes of the public.

***Recommendation: Improve Inter-Ministry Collaboration and Information Sharing***

OAPSB recommends that Ministry of Transportation driver's licence, Ministry of Transportation licence plate, and Ministry of the Attorney General databases be linked such that information regarding driver's licence suspension, licence plate denial and current address information can be readily accessed by law enforcement and municipalities alike so that Ontario reduces the risk that a person denied a driver's licence can still obtain a vehicle permit and so that offenders can be located and fines collected. It should be noted that municipalities need access to MTO data not just for traffic/driving-related fines, but to track addresses for individuals subject to other fines as well.

It is further recommended and that the government give priority to the operational changes required to implement this change so that municipalities will not face more than one more budget year without the authority necessary to meet their responsibilities to operate an effective law enforcement and POA court administration service.

**#2. Need for Operational Changes to Better Align the Authority of Municipalities with Their Responsibilities**

Municipalities have responsibility for ensuring effectiveness both in the enforcement of important laws protecting public safety and in the administration of an important element of Ontario's justice system. However, they do not have authority commensurate with those responsibilities. Current operational approaches by the provincial government are preventing their effectiveness in each of these critical publicly financed services.

Law enforcement and municipalities have tools at their disposal, and these tools are working with limited success. But some penalties (like driver's licence suspension) are limited to specific offences, while others (like adding fine amounts to the property rolls) are limited to specific offenders. According to stakeholders, modifying and improving the tools that are already available and in use will help improve unpaid fine collection.

While a number of tools are available to assist in the collection of unpaid fines, there is a consensus among stakeholders that some stiffer penalties are in order in specific situations. Licence plate denial and driver's licence suspension work, but they are limited in application. Many stakeholders urge that both programs be expanded to other vehicle and non-vehicle POA offences, such as labour and environmental violations. Multiple stakeholders have suggested that driver's licence suspensions should be linked to licence plates. Some stakeholders have suggested that a final letter should be sent by the



MTO to an individual notifying him or her of the impending licence suspension, as people may move and not realize they are driving on a suspended licence (thus rendering the penalty ineffective for practical purposes, until the driver is pulled over for an infraction). This notice was provided in years past, and the ending of this practice by MTO has created ongoing problems where drivers have moved and do not notify the court office of their address change, often saying to court staff that they thought that the databases were all linked and share such information when changed.

If licence plate denial were to be expanded to other offences, the process would be relatively simple as the infrastructure already exists. Currently, the licence plate number appears on parking tickets, while it may not appear on other kinds of tickets. Therefore the ticketing process might have to be adapted to allow name searches to connect offenders to licence plates and enforce the penalty.

Concerns about possible hardship have been raised and possibly limited the application of this penalty, as many individuals are highly reliant on their vehicles for their employment and livelihood. (Family members may also be reliant on the vehicle for their own needs.) Given that the hardship argument has not prevented licence plate denials to be imposed in some of the least serious POA offences (parking infractions), stakeholders feel that the hardship argument is not persuasive. As noted earlier, this approach is suitable, feasible and acceptable. The penalty is effective precisely because it directly impacts an individual's livelihood, and because the infrastructure is already in place. Many stakeholders strongly urge the government to look at expanding licence plate denial to other defaulted POA fines.

As with plate denial, a hardship argument can be made against driver's licence suspension as a penalty for a failure to pay POA fines. This is particularly true in cases where an individual has no access to public transit or is relied upon by others for transportation. In some cases, it might also limit an offender's ability to pay a fine by directly impacting his or her livelihood.

These arguments have not stopped Manitoba, Nova Scotia, Newfoundland and Labrador or England; these jurisdictions routinely suspend driver's licences for fines unrelated to road safety offences. Some stakeholders urge Ontario to enact similar rules to improve collection of POA fines.

#### **Other incentives:**

Stakeholders say that the province should also investigate vehicle impoundment as a possible penalty; requiring the payment of fines before getting one's car back could be a more powerful and immediate incentive than a plate denial or licence suspension.

There is a much higher rate of trial requests when a ticket has demerit points associated. This draws out the process and delays payment of the fine. Government and stakeholders should examine the issue and determine whether a more streamlined policy and process can be implemented to prevent delays. To address the (real or perceived) problem of leniency in court situations, stricter and more transparent standards should be developed.

Other provinces (e.g. Alberta, Nova Scotia) have negotiated the power to garnish federal income tax returns and other federal payments for non-payment of fines. Ontario has begun to investigate this, but unlike other provinces is not as incented to address it despite the fact that the Ontario government stands to gain higher victim fine surcharge revenue (about 20% of the value of all fines). It appears that



staff are occupied with competing priorities resulting in a thorough review of this opportunity being delayed.

***Recommendation: Stronger, Meaningful Penalties***

The OAPSB recommends:

- That, like with parking tickets and 407 fees, licence plate denial become a penalty for non-payment of any POA fine, regardless of type and that the government give priority to the operational changes required to implement this change so that municipalities will not face more than one more budget year without the authority necessary to meet their responsibilities;
- That driver licence suspensions, vehicle impounding and additional demerit points be given further study and consideration as potential penalties for non-payment of POA fines, and that the Government complete the analysis of such proposals and report back to affected stakeholders within 18 months of this white paper; and
- That Ontario work with AMO, the City of Toronto, and the FCM to negotiate the power to garnish federal income tax returns, HST refunds and other federally-refunded monies for non-payment of POA fines, and report back on progress by the time of the third quarter AMO MOU meeting in 2012.

**#3. Lack of Incentives to Pay**

Fines for some offences are notoriously difficult to collect. Other than parking offences, a very few *Highway Traffic Act* offences and 407 fees, all of which can be subject to licence plate denial and driver's licence suspension, there are few tangible penalties for non-payment. Many Ontarians are savvy enough to know which tickets could create problems in their daily lives (e.g., by having their licence plate renewal denied), and so cherry-pick and pay only those tickets accompanied by more "serious" penalties. Unfortunately, they get away with it. Stakeholders argue that such a system does not create respect for safe streets or the rule of law. Rather than allowing individuals to "cherry pick" which fines they pay, some stakeholders have suggested that, as with any other bill payment, the oldest bill should be required to be paid first (even if a licence is suspended due to a more recent fine). As noted below, courts should assess an individual's realistic ability to pay in such cases (imposing fines or alternative sentences that assist in achieving compliance with court orders).

Once a fine is imposed, there is no room for negotiation and thus no incentive for anyone to pay early (or in many cases, even on time). With no prospect of getting a better deal, many simply choose to ignore the fine or draw out the payment as long as they can. Justices of the peace have also come under pressure for facilitating the drawing-out of fine avoidance, granting time extensions to pay fines and leaving fines outstanding for long periods of time. Stakeholders note that in some cases refusal to pay is seen to be rewarded with leniency, a perception that does not encourage compliance by others.

Stakeholders agree that governments need to offer more incentives to pay fines. In the United Kingdom, for example, fines paid within seven days are subject to a 25% discount. If the accused offender opts to go to trial, and loses, he or she pays the cost of the trial; if he or she wins, the fine is of course dismissed.



Alberta deducts \$25 off all fines paid early. Alternatively, some stakeholders suggest that the administrative penalty for late payment could be raised to make late payment less appealing. The current fee in Ontario is only \$20; other provinces charge \$40 in the same situation.

***Recommendation: More Carrots and Sticks***

OAPSB recommends:

- That discounts for early fine payment be initiated as an incentive,
- That late penalties be doubled, and
- That POA offenders be required to pay fines in the chronological order of sentencing.

**#4. Lack of Available Data (at the Aggregate Level)**

Convincing stakeholders and governments to make unpaid fines a priority has been hindered by a lack of data on the subject. Most evidence is either very local or anecdotal, making strategic analysis difficult. Data that does exist is within the provincial government's ICON system, and is very difficult to access.

Stakeholders point out that no major studies have been undertaken, for example, on repeat offenders. Knowing why individuals repeat-offend, whether they are more dangerous to our communities, or what the likelihood is that they will ever pay could help guide public policy-makers in creating a more effective system. Individuals caught driving with a plate or driver's licence suspension due to unpaid fines are by definition repeat offenders, so the problem is a real one. Such data could also help insurance companies set better rates based on risk, ensuring that consumers with good records are not as burdened with the costs to the system incurred by these offenders. It could also be used, in conjunction with data from other jurisdictions, to establish benchmarks.

Stakeholders suggested that municipalities and the Ontario government should take an inventory of the data related to POA fines in their possession, and determine (through a working group or otherwise) how best to consolidate and share this information among stakeholders.

Stakeholders also suggested that some investigation should be taken into repeat offenders in particular. A better understanding of this issue will help decision-makers assess the effectiveness of available tools and impact on public safety. Other ideas proposed by stakeholders including encouraging further study on related issues by post-secondary institutions, perhaps even through funding for specific projects related to public safety, and approaching the insurance industry, which has a vested interest in these matters, to sponsor a study.

Data regarding the effectiveness of various collection tools is also needed.

***Recommendation: Better Data for Better Decision-Making***

OAPSB recommends that the Ministry of the Attorney General fundamentally improve the quality and accessibility of POA fine data and analysis at the aggregate level, so stakeholders (including government



ministries) can make informed decisions regarding fine collection challenges, expectations, and obstacles.

#### **#5. Need for Greater Stakeholder Engagement**

Just as government must, all stakeholders also need to coordinate efforts and accept that unpaid fines are a serious problem. Too often, various groups see POA fines as low-priority and not worthy of concerted effort. This is in part due to competing priorities, but also a lack of education, communication and dedicated resources. While some working groups and committees exist (with varying degrees of formality), they have not yet been effective in inspiring all stakeholder groups and jurisdictions toward a common goal.

Stakeholders agree they should collaborate to address specific issues through working groups, roundtables, and/or summits. As with government, stakeholders too often focus narrowly on their particular and immediate concerns and operate in silos. By coming together, stakeholders and government can gain insights from one another and develop workable solutions together. For collaboration to be effective, however, stakeholders recommend that such groups should have a mix of operations and policy people, with particular emphasis on representation from the enforcement community, citizens' groups and the auto insurance industry.

Appropriate forums are required for the mutual sharing of concerns and potential remedies ideas among stakeholders and affected government ministries. MAG held one such (limited) forum in July of this year. Leading up to the recent provincial election, AMO expressed interest in this issue by including it in their "12 Asks" of political parties.

#### ***Recommendation: Stakeholder Working Groups***

OAPSB recommends that the Assistant Deputy Minister of Court Services with the Ministry of the Attorney General host regular POA discussion forums with both stakeholders (including the auto insurance industry) and affected government ministries, with a view to soliciting outstanding POA fine collection concerns, sharing best practises, identifying outstanding issues, and effectively addressing those issues. This work must be co-ordinated, with significant focus on implementation of new policies and practices supported by the Ontario government.

#### **#6. Lack of Alternative Penalties**

Some offenders simply do not have the financial means to pay a given fine, no matter how deserved. Current practice keeps fines on the books that have no realistic prospect of payment, and governments waste resources tracking and attempting to collect them. Stakeholders note that the problem is especially acute for impoverished and repeat offenders, some of whom will simply give up when they realize they have no realistic chance of ever paying the amounts owed. This means loss of expected monies for the municipality, but more worrying is the impact it may have on the safety of our streets. An unpaid fine may result in a licence suspension and cascade into higher insurance premiums, leading more people to drive unlicensed and without insurance. Feeling hopeless and fatalistic about the situation, and operating "outside the law," reckless drivers may be encouraged to take greater risks—like fleeing the scene of accidents in which they were involved.



Courts, as part of the sentencing process where a person appears in court, can enquire about a person's ability to pay however there are no clear guidelines in place to govern this enquiry. Many stakeholders argue that forcing low-income offenders to pay by more compelling means (such as through property tax rolls) may compound social and family problems. For these situations, alternative sentences that encourage sentence fulfillment are needed.

For very low-income individuals, the penalties can be disproportionate to the offence. Courts could be given discretion to assess an individual's ability to pay information. For individuals who can prove financial difficulty, alternative penalties should be offered. Some stakeholders have proposed community service as an alternative to financial payments for very low-income individuals.

As one stakeholder pointed out, the *Good Government Act, 2009* contains hardship provisions to ease the burden on the truly disadvantaged. These provisions would balance out stronger and increased fine enforcement, but they have not yet been proclaimed into force.

***Recommendation: Assess Ability to Pay, and Offer Alternative Sentences***

OAPSB recommends:

- That the hardship provisions of the *Good Government Act, 2009*, be proclaimed and implemented, and
- That POA courts be authorized to assess an individual's ability to pay and, where warranted, allow for alternative sentencing such as community service in lieu of fine payment.

**#7. Need for Simple, Flexible Payment Methodology**

Concerns have also been raised about the complicated process for payment once the initial payment deadline has expired. As with anything administrative, there is a certain amount of bureaucracy involved in the payment of a fine. Some stakeholders note that complex processes and confusion even within provincial and municipal bodies about their roles in the process can be very discouraging for a citizen acting in good faith and trying to pay a fine.

If a POA fine is unpaid, the municipality will take enforcement action. This may mean registering an unpaid fine with the Ministry of Transportation, in the case of unpaid parking tickets leading to plate denials. In this case, the fine must be paid at a provincial government kiosk before the plate denial can be reversed and cannot be paid online or over the telephone. Anecdotal evidence indicates that tickets may be "lost" for a period while the transfer is taking place, making it impossible to pay the fine at all. Municipal and provincial bodies may also be giving conflicting and incorrect advice as to where fines can be paid in person, increasing frustration for a citizen trying to pay in good faith. Some individuals have had to pay twice (to the municipality and the provincial ministry)<sup>17</sup> because their ticket has been passed on and improper records have been kept. Incidents like these increase cynicism and undermine faith in the justice system.

<sup>17</sup> Canadian Press. "Provinces, cities track down unpaid tickets." CBC.ca (December 29, 2009), online: <http://www.cbc.ca/news/canada/toronto/story/2009/12/29/provinces-cities-track-down-unpaid-tickets.html>.



The process should be streamlined and relevant workers at the provincial and municipal governments should be trained in how these processes should work. Governments should work together to ensure that fines are simple to pay, particularly online and over the phone, even those fines that have been transferred to the province for collection purposes. Simply facilitating the payment of overdue fines online or over the phone could ensure more fines are collected. Proper records retention and tracking systems should be implemented to eliminate the problem of double-payment.

***Recommendation: Better "Customer" Service***

OAPSB recommends that POA fine payment methodology be simplified and made more flexible and seamless, such that payment requirements, options and processes are clear, simple and easy for payees.

**#8. Development and Sharing of Best Practices in POA Collections**

Despite the policy and operational challenges that permeate this issue, municipalities are working to develop and share best practices in POA collections under the current policy and operational system. The Municipal Finance Officers Association has established a POA Collections subgroup that met for two days in September for the third time to discuss these practices. They are seeking to tackle the "fine and forget" orientation that seems to be an unspoken and recurring theme in unpaid POA fines.

Contact in regards to a ticket is sporadic and can be confusing; administrative barriers may quickly deter an individual with only a slight propensity to pay. Following up with a ticketed individual will remind them of their debt and reinforce the seriousness of a POA fine.

Stakeholders urge governments to be more proactive in following up on unpaid fines. Some simple administrative measures, which do not require any legislative or regulatory changes, have been proven to work. In early 2011, the City of North Bay hired a collections clerk and began placing reminder calls to people recently fined.<sup>18</sup> In about six weeks, preliminary data indicates that the city was able to collect about \$40,000 more than it had during the same period the previous year.<sup>19</sup> This type of follow-up should occur as a matter of course. Many people will not pay if they are not asked or otherwise incented.

***Recommendation: Ask Them, and They (Might) Pay***

OAPSB recommends that local governments share best practices and diligently follow up on outstanding fines, in order to enforce court sentences, hold offenders accountable, improve public safety and realize fine revenue.

**SUMMARY OF RECOMMENDATIONS**

In summary, OAPSB recommends:

<sup>18</sup> Young, Gord. "Collection efforts paying off." North Bay Nugget (April 27, 2011), page A1.

<sup>19</sup> Young, Gord. "Collection efforts paying off." North Bay Nugget (April 27, 2011), page A1.



- **Improve Inter-Ministry Collaboration and Information Sharing:** That Ministry of Transportation driver's licence, Ministry of Transportation licence plate, and Ministry of the Attorney General databases be linked such that information regarding driver's licence suspension, licence plate suspension and current address information can be readily accessed by law enforcement personnel and court staff for the purpose of updating databases and providing current information to collection agencies.
- **Stronger, Meaningful Penalties:**
  - That driver licence suspension and licence plate suspension become penalties for non-payment of any POA fine, regardless of type,
  - That vehicle impounding and additional demerit points be considered as penalties for non-payment of POA fines, and
  - That Ontario negotiate the power to garnish federal income tax returns and other federal monies paid out, for non-payment of POA fines.
- **More Carrots and Sticks:**
  - That discounts for early fine payment be initiated as an incentive,
  - That late penalties be doubled, and
  - That POA offenders be required to pay fines in the chronological order of sentencing.
- **Better Data for Better Decision-Making:** That the Ministry of the Attorney General fundamentally improve the quality and accessibility of POA fine data, such that the stakeholders (including government ministries) can make informed decisions regarding fine collection challenges, expectations, and obstacles.
- **Embrace Stakeholders:** That the Assistant Deputy Minister, Court Services of the Ministry of the Attorney General host regular POA discussion forums with both stakeholders (including the auto insurance industry) and affected government ministries, with a view to soliciting outstanding POA fine collection concerns, sharing best practises, identifying outstanding issues, and effectively addressing those issues by implementing measures to improve the situation.
- **Assess Ability to Pay, and Offer Alternative Sentences:**
  - That the hardship provisions of the *Good Governance Act, 2009*, be proclaimed and implemented, and
  - That POA courts be authorized to assess individuals' ability to pay and, where warranted, allow for alternative sentencing such as community service in lieu of fine payment.





- **Better "Customer" Service:** That POA fine payment methodology be simplified and made more flexible and seamless, such that payment requirements, options and processes are clear, simple and easy for payees.
- **Ask Them, and They (Might) Pay:** That local governments diligently follow up on outstanding fines, in order to enforce court sentences, hold offenders accountable, improve public safety and realize fine revenue.

## CONCLUSION

Unpaid POA fines are a billion-dollar problem, and it is growing. This disregard for complying with court orders undermines the justice system, erodes public safety and denies municipalities and the provincial government of much-needed revenue. This growing problem is wholly inappropriate in a functioning democracy. Targeted and effective measures are needed to reach the approximately one-third<sup>20</sup> of offenders who simply do not pay their fines.

While stakeholders agree that most fine collection tools introduced in recent years are working to some extent, all agree that much more needs to be done. Comprehensive corrective action is overdue.

Current tools, such as licence plate denials, driver's licence suspensions, and the ability to add unpaid fines to property tax bills, should be expanded and improved. New tools, such as vehicle impoundment and garnishment of income tax refunds (and other federal monies paid to individuals and corporate debtors) should be considered. All levels of government and stakeholders need to collaborate and share expertise and information, to inform better public policy decision-making.

While stronger enforcement powers are in the public interest, there is also a responsibility to consider those debtors who, due to financial circumstances, are simply unable to pay. Enforcement actions should be directed against offenders who can pay but choose not to, while alternative sentencing (like community service) should be considered for those who cannot pay assessed fines.

Provincial government leadership and action is needed in these areas.

<sup>20</sup>

ICON database, as of July 2010 (based on data for years 2001-2009).



## APPENDIX A: INTERVIEWED STAKEHOLDERS

OAPS B thanks the following stakeholders for contributing their time and insights to this important project.

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