

# **The Regional Municipality of York**

Committee of the Whole  
Finance and Administration  
May 12, 2016

Report of the  
Regional Solicitor

## ***Provincial Offences Act Collections***

### **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**

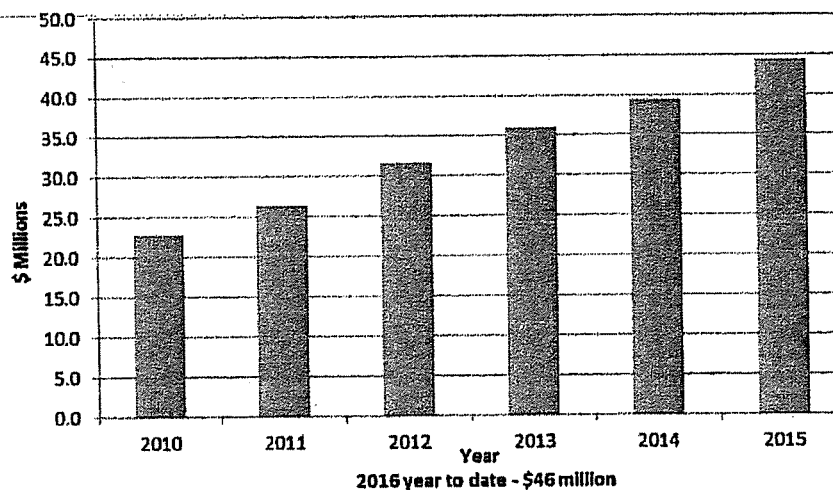
The *Provincial Offences Act* (the "POA") gives defendants charged with offences three options; to pay the fine, dispute the charge through early resolution, or request a trial. If a defendant fails to choose one of these options or fails to pay the fine imposed by the court following early resolution 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.

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Figure 1

### Total Unpaid Fines



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

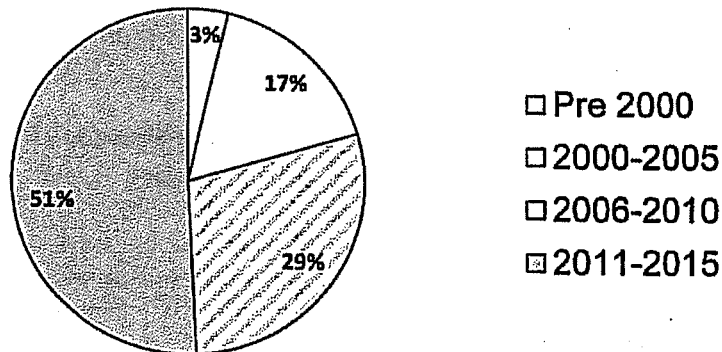
POA fines are debts to the Crown and therefore remain in default until paid. At any point in the collection process, Court Services can apply various enforcement tools for the purpose of fine collection regardless of when the fine was imposed.

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.

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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.

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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

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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.

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### **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.

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## **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

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The Senior Management Group has reviewed this report.

Recommended by:

Approved for Submission:

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eDocs 6690658

Accessible formats or communication supports are available upon request

