



**City of Kingston
Report to Council
Report Number 18-206**

To: Mayor and Members of Council
From: Denis Leger, Commissioner, Corporate and Emergency Services
Resource Staff: Susan Nicholson, Director of Legal Services and City Solicitor
Date of Meeting: July 10, 2018
Subject: Write-Off of Uncollectable Defaulted Provincial Offence Fines

Executive Summary:

The Province of Ontario transferred the responsibility for the administration and operation of the Provincial Offences Court to the City of Kingston in March 2000 pursuant to a Memorandum of Understanding (MOU) and Local Side Agreement (LSA) between the Ministry of the Attorney General and the Municipality.

City Council, at its meeting of December 15, 2015, adopted a Policy for the Write-Off of Provincial Offences Act (“POA”) Defaulted Fines, which policy is attached here to as Exhibit ‘A’ By-Law Number 2016-33 being “A By-Law To Adopt A Policy For The Write-Off Of Uncollectable Defaulted Provincial Offence Fines”. The Policy directive is that the City Solicitor, in consultation with the Treasurer, shall deem a fine uncollectable when it has not been paid in full and is overdue for at least six years; or meets a condition of section 6 of the Policy.

This report recommends that Council approve the write-off of the Provincial Offences Act defaulted fines between the years 2006 and 2011, which have been deemed uncollectable and for which small balances remain outstanding, totalling \$2,385,000, in accordance with the City of Kingston Policy for the “Write-Off of Uncollectable Defaulted Provincial Offence Fines”.

Recommendation:

That Council approve that staff be authorized to write-off an amount up to \$2,385,000 of aging and defaulted POA fines from between 2006 and 2011 in accordance with the Policy for the Write-Off of Uncollectable Defaulted Provincial Offence Fines and that staff be directed to notify the Ministry of the Attorney General of said write-offs.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

Denis Leger, Commissioner, Corporate & Emergency Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Lanie Hurdle, Community Services and Deputy CAO

Not required

Jim Keech, President and CEO, Utilities Kingston

Not required

Desirée Kennedy, Chief Financial Officer & City Treasurer

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Options/Discussion:

In March 2000, the Province of Ontario transferred the responsibility of the administration and operation of the Provincial Offences Court to the City of Kingston. The City operates the municipal court pursuant to a Memorandum of Understanding (MOU) along with a Local Side Agreement (LSA) with the Ministry of the Attorney General for the Province of Ontario. Under the terms of the MOU and LAS, the City is required to collect and enforce the court imposed fines as authorized under the *Provincial Offences Act*.

The City of Kingston enforces fine collection as follows:

- Notices of fine and due date are mailed to all defendants after convictions are registered on all fines;
- The City's Collection Officer is present in the courtroom (home court and satellite location) on court dates and meets with defendants after they are convicted to establish payment schedules with defendants, gather contact information, and assist with any payment questions defendants may have;
- Final notices are mailed to defendants when the fines proceed past the due date;
- Research is conducted to locate defendants, phone numbers, addresses and places of employment;
- Reports are provided to credit bureaus;
- Driver's licences are suspended in every case possible;
- Files are assigned to 3rd party collection agencies;
- Judgments against defendants are obtained in larger fine matters, Certificates of Default are filed, writs of seizure and sale are executed, wage garnishments where possible, and addition of fines to tax roll where allowable in cases of property ownership;
- All attempts are made to contact defendants and work with them to get fines paid and comply with court orders. Payments plans are encouraged and are flexible.

As of May 1, 2017, the Ministry of Transportation (MTO) has not been renewing vehicle plates until defaulted Provincial Offences Act (POA) fines (such as speeding fines) dating back to May 1, 2010 have been paid. The Ministry of the Attorney General (MAG) has also made changes to allow municipal governments to recoup the costs of using collection agencies to collect defaulted fines.

In May 2018, a system update was completed at Service Ontario so that any drivers with suspended licences due to unpaid fines are not able to renew vehicle permits, obtain or renew licence plates or complete vehicle transactions in addition to not being able to renew their driver licences. This applies to convictions registered back to May 2010 only.

For many years the City has used one external collection agency was used to assist the POA Court Collections Officer with the collection of aging and defaulted fines. Most recently, that

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agency was Credit Bureau of Canada Collections. In 2015, the City issued a new RFP for Collection agencies to assist with the collection of defaulted fines. Contracts were awarded to Partners In Credit Inc. and Credit Bureau of Canada Collections and using the services of two agencies offers a comparator, and the opportunity to assign more files to the agency which yields better results. Files are assigned on a 50/50 basis between the agencies and the rate of collection is relatively similar. Since October 2016 a total of 11,777 files have been assigned collectively to the two collection agencies valued at \$5,887,046, excluding the collection agency fees, and payments received from the agencies from the date assigned total \$353,835, inclusive of collection agency fees. Collection agency fees are added to the fine amounts and are paid by the defendant with no cost to the City.

The City uses all collections methods available to it for the enforcement and collection of court imposed fines and in accordance with the Ministry of Attorney General Policy. Despite all of the collection efforts and tools available, there are fines that the City is unable to collect. Writing off uncollectable fines reveals a more realistic amount of outstanding fines and will identify cases for which active collection has ceased. Enforcement efforts can then be focused on more recent fines for which there is a higher probable rate of collection.

The Ministry of the Attorney General has a “Write-Off Directive and Operating Guideline”, which includes the requirement that, “each Municipal partner shall create a formal Write-Off Policy establishing protocols and thresholds under which POA accounts receivable shall be deemed to be uncollectable and therefore eligible for write-off”. The Write-Off Directive and Operating Guideline states a mandatory requirement whereas 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. In 2015, the City adopted a policy for the write-off of aging and defaulted fines which are deemed uncollectable in accordance with the Ministry’s Write-Off Directive. The City’s approved Write-Off Policy directive is that the City Solicitor, in consultation with the Treasurer, shall deem a fine uncollectable when it has not been paid in full and is overdue for at least six years; or meets a condition of section 6 of the Policy attached as Exhibit ‘A’.

Proposed 2018 Write-Off:

A review of aging and defaulted fines has been completed and it has been determined appropriate that aging and defaulted fines deemed uncollectable from between years 2006 and 2011 be written off. These aging fines have been subject to our collection efforts since they went into default and are yielding no results. The listing consists of 5,014 files and amounts to a total of \$2,385,000.

Default Years	Number of Files	Total Outstanding
2006	340	\$234,718
2007	623	405,678

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Default Years	Number of Files	Total Outstanding
2008	894	411,257
2009	932	533,855
2010	1,044	401,097
2011	1,181	398,395
Total	5,014	\$2,385,000

This total amount includes the court imposed fine amount, victim fine surcharge and court cost amount as well as default fees. It is important to note that the victim fine surcharge is not money that is retained by the City, but is remitted to the Province upon collection. The amount to be written off does not include collection agency fees.

The write-off does not absolve a convicted offender from the requirement to pay a fine as these debts are owed to the Crown and continue in perpetuity. A record of all write-offs is maintained and the fines are still collectable. The write-off includes files deemed uncollectable, deceased persons, insolvent companies, and some files on which small balances remain outstanding.

POA fines are not accrued on the City of Kingston's financial statements and are not shown as revenue until collected. If a defendant comes forward to pay, or the City is able to locate an offender and secure payment on a fine that has previously been written off, payments will be accepted and applied to the outstanding fines. Collection efforts can be focused on more recent fines where the rate of collection is likely greater.

The proposed 2018 write-off is in accordance with the City's Write-Off of Uncollectable Defaulted Provincial Offence Fines Policy, attached as Exhibit 'A'.

Existing Policy/By Law:

Policy for the Write-Off of Uncollectable Defaulted Provincial Offence Fines adopted pursuant to By-Law No. 2016-33.

Notice Provisions:

There are no Notice Provisions for this matter.

Accessibility Considerations:

There are no accessibility considerations for this matter.

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Financial Considerations:

POA fines are not accrued on the City of Kingston financial statements and are not shown as revenue until collected.

Contacts:

Susan Nicholson, Director of Legal Services and City Solicitor, ext. 1293

Desirée Kennedy, Chief Financial Officer & City Treasurer, ext. 2220

Other City of Kingston Staff Consulted:

Wendy McCafferty, Court Administrator, Legal Services Department, ext. 1615

Lillian Sleeth, POA Collections Officer, Legal Services Department, ext. 1619

Exhibits Attached:

Exhibit A: By-Law No. 2016-33 – Adoption of Write-Off Policy

By-Law Number 2016-33

**A By-Law To Adopt A Policy For The Write-Off Of Uncollectable
Defaulted Provincial Offence Fines**

Passed: December 15, 2015

Whereas the City of Kingston administers the Provincial Offences Court on behalf of the Province of Ontario, Ministry of Attorney General; and

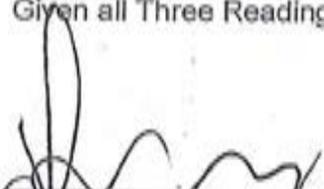
Whereas the Province has established a "Write-Off Directive and Operating Guideline" which allows for a municipality to create a write-off policy establishing protocols under which certain Provincial Offences Act accounts receivables may be deemed uncollectable and eligible for write-off; and

Whereas there are some fines which are uncollectable by the municipality and it is in the best interest of the municipality to write them off as such;

Therefore be it resolved that the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. The policy for the Write-Off of Uncollectable Defaulted Provincial Offences Fines, attached hereto and marked as Schedule "A", is hereby adopted.
2. This By-Law shall come into force and take effect on the date of its passing.

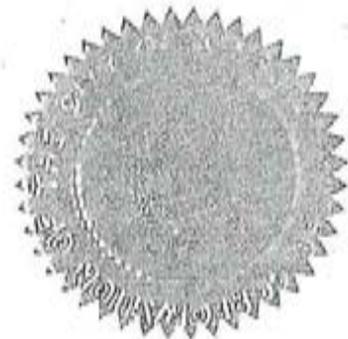
Given all Three Readings and Passed: December 15, 2015



John Bolognone
City Clerk



Bryan Paterson
Mayor





Policy Name: Write-Off of Uncollectable Defaulted Provincial Offence Fines

Policy number: POL-15
Effective date: not set
Review date: not set
Final approver: City Council
Training course code: not applicable
Document state: draft

1. Purpose

This policy establishes guidelines for the process to write-off fines under the Provincial Offences Act that are deemed uncollectable by the City. The goal of the policy is to ensure that uncollectable POA fines are written-off in a timely and consistent manner, to accurately reflect the total amount owing to the City and to identify fines for which active collection efforts have ceased.

2. Definitions

- 2.1. City: means the Corporation of the City of Kingston
- 2.2. Fine: means a POA fine imposed against an offender in respect of a charge administered within the City's court area and includes the set fine amount, and all applicable costs, surcharges and fees associated with such fine.
- 2.3. ICON: means the Province of Ontario's Integrated Court Offences Network, which is a provincial database containing all POA Fines and disposition information.
- 2.4. LSA: means an agreement executed between the Her Majesty the Queen in Right of Ontario, as represented by the Attorney General and the City, pursuant to the Streamlining of the Administration of the POA with respect to the transfer of POA functions to the City, dated March 13, 2000.
- 2.5. MOU: means the memorandum of understanding between Her Majesty the Queen in Right of Ontario, as represented as the Attorney General, and the City, pursuant to the Streamlining of the Administration of the POA, with respect to the transfer of POA functions to the City, dated March 13, 2000.
- 2.6. POA: means the Ontario Provincial Offences Act R.S.O. 1990, Chapter P.33
- 2.7. Write-Off: means the removal of a Fine from the City's accounts receivables and from ICON. Written-off shall have a corresponding meaning.

Policy Name: Write-Off of Uncollectable Defaulted Provincial Offence Fines

3. Persons Affected

- 3.1. City Solicitor
- 3.2. Treasurer
- 3.3. City Council

4. Policy Statement

4.1. It is the policy of the City to ensure that:

- 4.1.1. a Fine shall be subject to write-off once it is deemed uncollectable;
- 4.1.2. the subsequent write-off of aging and defaulted Fines under which the POA accounts receivable shall be deemed uncollectable and eligible for write-off are in accordance with the write-off directive and operating guidelines established by the MOU and the LSA;
- 4.1.3. a detailed accounting of the total number of Fines owing to the City and the associated monetary value to be written off are provided to City Council annually for review and approval.

5. Responsibilities

5.1. The City Solicitor shall ensure:

- 5.1.1. the City's POA court is operated in accordance with the MOU and the LSA;
- 5.1.2. court imposed Fines are enforced and collected, in consultation with the Treasurer.

5.2. The Treasurer shall review and approve overdue POA Fines and make recommendations to City Council for amounts to be written off annually.

5.3. City Council shall review and consider recommendations from the Treasurer regarding the write-off of Fines and approve the amount to be written off by the City.

Policy Name: Write-Off of Uncollectable Defaulted Provincial Offence Fines

6. Procedures

6.1. The City Solicitor, in consultation with the Treasurer, shall deem a Fine uncollectible when:

6.1.1. it has not been paid in full; payment is overdue for at least six years and it is not the subject of current civil enforcement action, or if the Fine is less than six years overdue for payment and one of the following conditions exist:

- i. the person owing the Fine is deceased and collection from the estate is impractical or has been unsuccessful;
- ii. 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;
- iii. 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;
- iv. the person or entity owing the Fine cannot be located;
- v. the amount owed is \$25 or less;
- vi. collection of the Fine is required to be discontinued due to a legislative requirement, a court order or a provincial or federal government directive.

6.2. The City Solicitor shall provide to City Council, annually, a summary of the total number of Fines and the associated monetary value to be written off that year and shall:

6.2.1. ensure that ICON is coded to write-off the Fines contained within the accounting provided for write-off;

6.2.2. 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;
- ii. a record of the costs and fees included in the outstanding Fine amount;
- iii. documentation as to all collection activities undertaken with respect to the Fine; and
- iv. the reason for the fine being written-off.

6.3. The City Solicitor will retain an itemized list from the City's POA Court and ICON detailing each Fine written-off once the Fines are removed from ICON for the purposes of any potential future collection.

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.

Appendix A

Process for Re-Entering Cases into ICON

1. Access the IACVH (conversion) screen with the case number.
2. The IIOFE (entry) screen will appear, allowing for entry of the case information. Please note that ICON will only allow dates prior to December 31, 1994 to be entered into the court date field. It is suggested that, in order to identify these cases, all cases being re-entered after write-off and subsequent payment should be keyed with a common court date (e.g., 010194). Once you hit the enter key, the ISCDS (update) screen will automatically appear.
3. Update the case information on the ISCDS (update) screen with the disposition information, including entering the same date in the conviction date field as was entered in the court date field on the previous IIOFE (entry) screen (e.g., 010194 as noted above). Update the fine and cost information and hit the enter key. The case has now been re-entered into ICON and payment can be processed through the IFCR (cash) screen.

The payment information related to the case should appear on the daily RICO reports.

Please note that access to the IACVH (conversion) screen is limited to Court Manager's.