

## Provincial Offences Write Offs

Presented To:	City Council
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Type:	Managers' Reports
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Recommended by:	General Manager of Corporate Services

## Report Summary

This report provides a recommendation regarding the write off of Provincial Offences Fines that have been deemed to be uncollectible.

## Resolution

THAT the City of Greater Sudbury approves the write off of \$3,090,709.03 of Provincial Offences Fines that have been deemed to be uncollectible as outlined in the report entitled, "Provincial Offences Write Offs", from the General Manager of Corporate Services, presented at the City Council meeting on May 25, 2021.

## Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters and has no direct connection to the Community Energy and Emissions Plan.

## Financial Implications

If approved, the write off of these uncollectible accounts will not have an impact on the 2021 year-end position as Provincial Offences fines are recorded on a cash basis for accounting purposes.

## Background

Responsibility for the administration and operation of the Provincial Offences Court was transferred to the City of Greater Sudbury from the Province of Ontario in 2000.

Under the Provincial Offences Act (the Act), offences are divided into three parts:

- Part I of the Act governs minor offences, such as moving violations, with a maximum fine of \$1,000;
- Part II of the Act deals exclusively with parking infractions; and
- Part III of the Act covers more serious offences, with higher fines in excess of \$1,000, such as driving while licence suspended, driving without valid automobile insurance, and charges under Occupational

## Health & Safety legislation.

In addition to the administration of Provincial Offences Court matters, the transfer of responsibility also required the City of Greater Sudbury Provincial Offences Office to assume responsibility for the collection of fines issued under the Act. At the time of the initial transfer of responsibility, the Province transferred approximately \$6,000,000.00 of unpaid, defaulted fines to the municipality.

Following this transfer of responsibility and outstanding fines, a number of municipalities undertook large write offs of the fines. However, the City of Greater Sudbury did not perform a write off of any kind for these outstanding fines and the amount of defaulted, and unpaid fines began to accumulate.

In 2008 the Ministry of the Attorney General issued a Write Off Directive and Operating Guideline to all Municipal Partners that are subject to a POA Transfer Agreement and the Related Memorandum of Understanding with the Attorney General. The directive included provisions for municipalities to develop formal write off policies and provided Municipal Partners with guidance as to the minimum requirements that they are expected to meet in order to write off defaulted fines.

The City of Greater Sudbury's write off policy was adopted by City Council 2010, however no fines were written off at that time.

It was not until 2016 that the City of Greater Sudbury performed its first write off of Provincial Offences Fines. However, at that time the write off only applied to \$283,816 of outstanding parking fines from 1988 to 2010. By comparison, Part II Parking Offence fines are minor in nature compared to fines issues under Parts I and III of the Act therefore the impact of the write off on the total amount of unpaid fines was minimal.

The City of Greater Sudbury's second write off was approved by Council in 2018, writing off \$3,451,847.60 in Part I and Part III Offence fines.

The write off that is being requested in this report totals \$3,090,709.03 and includes Part I, Part III fines from 2011 to 2014 and Part II (parking) fines from 2010 to 2014. This write off seeks to give consistency to the process of fines being written off and bring down the outstanding balance of unpaid fines over the course of the next four years.

According to Section 69(1) of the Act, the payment of a fine is in default if any part of it is due and unpaid for fifteen days or more. When a fine goes into default, defendants are issued Notices advising them of the defaulted fine and are given opportunities to pay the fine prior to enhanced collection activities being undertaken by the Provincial Offences Office.

Despite the provisions of the legislation, fines that are in default after fifteen days are not automatically considered for write off. Before a fine is considered for write off the Provincial Offences Office undertakes a series of internal and external collections methods to recoup the outstanding defaulted fine such as, court ordered payment plans, in-house payment plans, licence suspension and plate denial, civil enforcement, adding the defaulted fines to property tax roll collection. Third party collection agency services are also used when necessary to assist in the recovery of defaulted fines. Additionally as per the provisions of the Ministry of the Attorney General Directive and Guidelines, a fine must be in default for a minimum of two years prior to being considered for inclusion in a write off.

The 2021 budget for Provincial Offences Office fines and surcharges is \$2,900,000.

## **Write Off Policy and Criteria for Write Offs**

As noted above, in 2010, the City of Greater Sudbury approved a policy for the write off of Provincial Offences Fines. Pursuant to the provisions of the policy, fines are deemed to be uncollectible and are recommended for write off once all internal and external collection activities have been exhausted. Once a fine has been identified to be included in the write off, the provisions of the policy are reviewed against the

circumstances of the fine and a determination is made with respect to the likelihood that the outstanding fine will be able to be recovered.

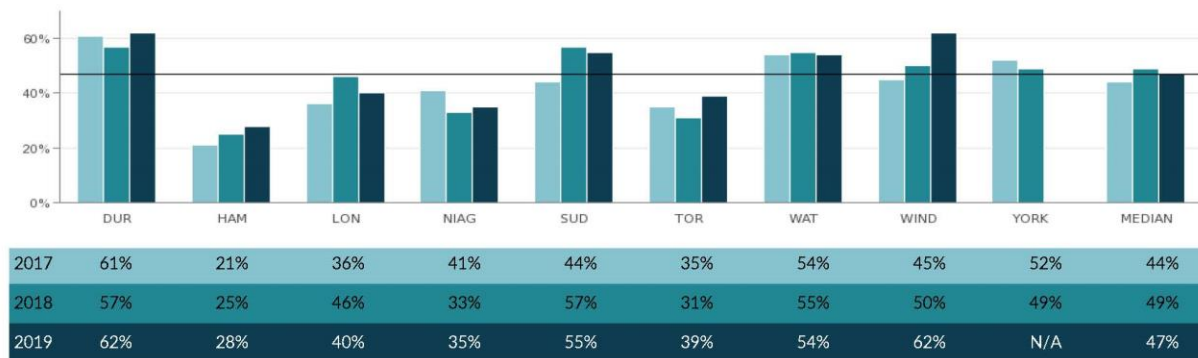
The ability of a Provincial Offences Office to successfully collect fines is influenced by many factors including, the nature and size of the fine, the circumstances and ability to pay of the person and the collection tools available. Collecting fines is a universal challenge for Ontario Municipalities and is not unique to the City of Greater Sudbury.

In comparison to Municipal Benchmarking Canada comparator municipalities, the City of Greater Sudbury's collection rate of defaulted fines falls within the top three. In 2019 the City of Greater Sudbury's collection rate was 55% compared to Windsor and Durham whose collection rates are listed at 62%.

## POA (Court Services)

Figure 25.4 Defaulted Collection Rate

This measure tracks how successful Ontario municipalities with POA responsibilities are in collecting defaulted fines using a variety of collection methods, including but not limited to collection agencies, tax rolls, license suspension and plate denial. The Provincial Offences Act (POA) gives defendants charged with offences three options: (1) to pay fine, (2) dispute the charge through early resolution, or (3) request a trial. If a defendant fails to choose one of these 3 options or fails to pay the fine imposed by the court following early resolution or trial, the fine goes into default. POA fines are debts to the Crown and therefore remain in default until paid.



Source: PCRT310 (Efficiency)

Municipalities across the province undertake a number of measures to recover defaulted fines, and while there is no standardized practice or method for doing so, municipalities have established best practice criteria to assist in this process. Appendix A provides a description of the various methods that the City of Greater Sudbury undertakes both internally and externally to recover outstanding fines.

Prior to initiating a write off, there are a number of criteria and thresholds that must be met, as well as the classes and circumstances under which a fine may be written off. Under the City of Greater Sudbury's policy, write offs are broken down into two categories, General Write Offs or Case-by-Case Write Offs.

Write offs are considered to be General Write Offs in one of two circumstances:

- a) Underpayment: When an underpayment is made on a fine leaving a nominal balance and where it is deemed to not be cost effective to pursue any collection activity.

- b) Deceased Person: A Death Certificate or proof of death is required.

Write offs are considered to be a Case-by-Case Write Off when at least one of the following criteria is met:

- a) Out of Country: All efforts to collect have been exhausted by either the Provincial Offences Court Administration or a third party Collection Agency.
- b) Out of Province: All efforts to collect have been exhausted by either Provincial Offences Court Administration or a third party Collection Agency.
- c) Company in Default:
  - a. All efforts to collect have been exhausted by either the Provincial Offences Court Administration or a third party Collection Agency.
  - b. The company has been sold and the new owner is not responsible for the debt.
  - c. The company has been dissolved.
  - d. The company has filed bankruptcy.
- d) Person with No Fixed Address:
  - a. All efforts to locate the debtor have been exhausted by either the Provincial Offences Court Administration or a third party Collection Agency.
- e) Other – As may be indicated.

As per the provisions of the adopted policy, in order for a fine to be written off, a number of criteria must be met and taken into consideration:

- Collection procedures have been progressively applied
- Reasonable efforts have been exhausted prior to a fine being considered for write off
- Timely, systematic and progressively severe delinquency notices have been delivered
- “Extension of time to Pay” motions have been allowed for an repayment plans have been made
- All applicable POA administrative sanctions have been applied to all fines
- Defaulted fines have been referred to a third party collection agency
- Additional judgements have been sought and Civil Enforcement processes invoked
- Documentation has been maintained to reflect the processes followed

Provincial Offences accounts are regularly reviewed to identify potential write offs and to identify accounts deemed uncollectible. Once all efforts to collect a defaulted fine have been exhausted, the fine should be considered to be included in a write off.

As per the directive of the Ministry of the Attorney General, Ontario municipalities have established policies for the write off of uncollectible Provincial Offences fines and have established best practice criteria for doing so. Across the province, the recommended best practice for the write off of uncollectible Provincial Offences fines suggests that write offs must be in default for a minimum of 2 years, with the exception of minor underpayments.

Additional criteria is also taken into consideration when initiating an annual write off of Provincial Offences fines. The City of Greater Sudbury's write off policy and practices are in line with both the Provincial directive and the best practices of comparator municipalities.

## Proposed 2021 Write off

Fines are described in two different categories: (1) parking; and (2) POA offences. Parking fines are fines that are imposed for infractions such as, failing to pay for a meter or parking in a no parking zone and are more simple in nature. However, Provincial Offences infractions are far more varied and can be more complex. Provincial Offences Fines include but are not limited to; driving offences, trespassing, liquor licence and by-laws such as noise and animal control; along with other contraventions including hunting and fishing infractions.

In order to align the collection years of both parking and POA offences, fines will be written off as follows:

Time Period:	Fine Type:	Fine Amounts:
2010-2014	Parking	\$229,970.00
2011-2014	POA Offences	\$2,860,739.03
<b>Totals:</b>		<b>\$3,090,709.03</b>

As noted in this report, previous write offs only encompassed portions of the outstanding defaulted fines, and reports were not brought forward on a consistent basis. This resulted in an imbalance between outstanding Part II Parking fines and outstanding Part I and III fines, and higher dollar amounts being requested to be written off.

The purpose of the write off being proposed in this report is to bring consistency to the process and perform an administrative clean up of the outstanding fines. By doing so, it is anticipated that lesser amounts will be requested to be written off in the future.

It is important to note that writing a fine off does not extinguish the legal obligation of the convicted offender or debtor with respect to the amounts owing pursuant to the Act. Fines are written off for accounting and administrative purposes, however the write off does not absolve the offender or debtor from the requirement to pay the fine that has been written off.

All fines imposed under the Act are debts owed to the Crown and are not subject to the Limitations Act; therefore collection activities for written off accounts can be resumed when conditions change. Unpaid debts can be reinstated and enforced at any time in the future if an opportunity arises.

## Resources Cited

*Provincial Offences Act*

<https://www.ontario.ca/laws/statute/90p33>

Write Off Policy for Provincial Offences Act (POA) Fines, Report presented April 21, 2010:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=237&itemid=2976&lang=en>

Outstanding Provincial Offences Amounts, Report presented November 20, 2018:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&lang=en&id=1249&itemid=15641>

By-law 2018-191:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=24985.pdf>

