



Ombudsman
Toronto

Listening. Investigating. Improving City Services.

Ombudsman Toronto Enquiry Report

Enquiry into the City's delay of almost nine years collecting a *Provincial Offences Act* fine

April 6, 2018

Complaint Summary

1. In August, 2016, the complainant received a letter from a collections agency informing him that he owed the City of Toronto \$849 from a *Highway Traffic Act* conviction almost nine years before, in October 2007.
2. The complainant believed that he had paid the fine at the time of the conviction, but he did not have any documentation to corroborate this. The City's Court Services Division ("Court Services") had no record of payment.
3. The complainant had not received any notice of an outstanding fine until receiving the collections letter nearly nine years after the conviction. His address had not changed.
4. Staff in the Court Services division of the City ("Court Services") told the complainant that to challenge the fine, he would need to bring a motion in Court to extend the time to file an appeal of the conviction. If the motion was granted, the complainant could then appeal the conviction.
5. The complainant decided to pay the fine. He also complained to Ombudsman Toronto however about how long it had taken the City to notify him that the payment was overdue.

Ombudsman Toronto Enquiry: Steps Taken

6. We gathered information from the complainant and from staff at Court Services, the Ontario Court of Justice (criminal) at Old City Hall, Toronto, and from the City's Revenue Services Division.
7. We also reviewed relevant legislation, including the *Provincial Offences Act* ("POA") and the *Highway Traffic Act*, as well as applicable City policies and procedures.

Court Services' Role in handling POA cases

8. In 1997, the province amended the POA to allow it to enter agreements with municipalities to undertake some of the administration and prosecution of the POA. Court Services administers a variety of POA fines under such an agreement.
9. Some of the fines administered by Court Services are listed on the City's website, and include:
 - Speeding, careless driving, seat belt infractions - *Highway Traffic Act*
 - Failing to surrender an insurance card or possessing a false or invalid insurance card - *Compulsory Automobile Insurance Act*
 - Being intoxicated in a public place or selling alcohol to a minor - *Liquor Licence Act*
 - Entering prohibited premises or failing to leave premises after being directed to do so - *Trespass to Property Act*
 - Occupational Health and Safety and Ministry of Environment violations
 - Noise, taxi and animal care by-laws - City by-laws
 - Parking offences
10. The province requires that Court Services use the provincial Ministry of the Attorney General's file management system, ICON, to manage the POA cases it handles.
11. Every year, Court Services administers between 300,000 and 350,000 POA fines. It uses a number of methods to attempt to collect outstanding fines, including an internal Collections Automated Dialer (which calls people with an outstanding fine, plays a general message about fees owing and leaves a return phone number) and third party collection agencies.
12. Between January 2016 and October 2016, Court Services sent 159,097 outstanding fines to external collection agencies. During the same period, the internal Collections Automated Dialer made 72,356 calls.
13. Outstanding POA fines do not expire. They do not clear on personal bankruptcy and can be added to the tax roll in Toronto and other municipalities where Toronto has a reciprocity agreement.
14. Court Services does not handle criminal or youth justice cases. Those are administered by the Ontario Court of Justice and Ontario Superior Court.

Court Services' Handling of the Complainant's File

The complainant's file was unusual

15. Court Services told us that the complainant's file was different from most POA files it handles because it began as a criminal court charge and ended up as a POA conviction and fine.
16. Of the 350,000 POA files Court Services administers every year, only about 400 get transferred from the criminal courts to Court Services (i.e., 0.001%). When this happens, it is as a result of a plea bargain. The Crown withdraws the criminal charge and replaces it with a POA charge to which the accused pleads guilty.

No system for notice in cases like the complainant's

17. When someone who is originally charged with a criminal offence pleads guilty to and is convicted of a POA offence, the judge informs them orally in Court of the fine being imposed and the amount. They do not however receive anything further from the criminal courts, by mail or otherwise.
18. Most people with POA fines receive from the City a Notice of Fine and Due Date ("NFDD") from Court Services, which is automatically produced by ICON. However, ICON does not produce an NFDD for people whose files began as criminal charges. Court Services told us it cannot reprogram ICON to produce an NFDD automatically in such cases.
19. Until our Enquiry, Court Services had not been sending any notice to those people.
20. At the time he was convicted in 2007, the judge told the complainant that a fine was being imposed, and how much. After that, however, the complainant received no notice or reminder until almost nine years later.
21. A further complicating factor in this case was that the complainant's file was held in "SI" status in ICON. Court Services explained that this meant that a driver's licence suspension was pending but being postponed. SI status occurs for two reasons – either because the City is waiting for the file to be transferred from the criminal court, or because the conviction is under appeal.

Complainant's file was sent for collection in a 2016 pilot project

22. In 2016, Court Services implemented a pilot project in one of its court locations to attempt to clear a backlog of approximately 3,000 "SI" status files, including the complainant's.
23. Court Services confirmed that it had not sent any notice of the outstanding fine to the complainant before sending the case to collections in July, 2016.

24. When Court Services sent the complainant's file to collections, there was no record in ICON that the complainant had paid his fine.

The Complainant's Position

25. While the complainant acknowledged that it was possible he did not pay the fine, he had thought he had paid it in 2007 or 2008. He was unable to provide any documentary evidence to corroborate this however.

26. The complainant contended that had he received notice of the fine earlier, he could have paid it and not incurred additional collection fees. When the complainant raised this with Court Services, it agreed to waive the \$104 collection fee.

27. The complainant decided to pay the fine to resolve his own case, but encouraged us to pursue the systemic problem that led to his notice coming so late.

Analysis and Findings

28. The fact that the City did not send the complainant a notice of conviction and fine combined with its lengthy delay in pursuing payment presents questions of fairness.

29. Court Services staff acknowledged that the lack of a system to provide notice about outstanding fines to people whose files are transferred from the criminal courts is a gap that should be addressed.

30. As a matter of fairness, people should receive a notice stating:

1. What offence they were convicted of;
2. What penalty was imposed (i.e., a fine);
3. How the fine can be paid;
4. The deadline for paying the fine; and
5. What will happen if they do not pay the fine by the deadline.

31. This is the same information that other people found guilty of POA offences receive as a matter of course.

Ombudsman Recommendations

32. In consideration of the information gathered through this Enquiry, we made the following recommendations:

1. Court Services should devise and implement a system to notify people charged with a criminal offence but then found guilty in criminal court of a POA offence essential information about the conviction and the fine imposed. The notice should have a similar format and contain similar information to the NFDD

(Notice of Fine and Due Date) that is automatically generated and sent in other POA cases.

2. Court Services should report back to our office on the effectiveness of the new Notice of Fine and Due Date process after one year of implementing it. Its report should include:
 - i. The number of people with files transferred from the criminal courts to Court Services for POA fine administration,
 - ii. How many of those people were sent a NFDD under the new process, and
 - iii. Any problems, concerns or other matters arising out of the new process.

Division Response

33. Court Services accepted our findings and agreed that the current gap in services resulted in unfairness.

34. In response to our recommendations, it analyzed the feasibility of implementing a manual system of identifying cases transferring from the criminal courts into its POA system and generating a Notice of Fine and Due Date for those cases.

35. Court Services then implemented this new system and notified all staff of the new procedure.

Follow-Up

36. Ombudsman Toronto will follow up with Court Services in one year for an update on the implementation of our recommendations.

(Original signed)

Susan E. Opler
Ombudsman