SUBJECT: Recovery of Collection Agency Costs (POA) FCS06013 (City Wide)

RECOMMENDATION:

(1) That the Ministry of the Attorney General be requested to provide consent in relation to Provincial Offences Act collections to allow the City to recover its collection agency fees in addition to the debts and costs owing to the City by the debtor, and;

(2) That subject to this consent being granted, the by-law attached as Appendix “A” to report FCS06013 be enacted.

Joseph L. Rinaldo, General Manager
Finance and Corporate Services

EXECUTIVE SUMMARY:

Outstanding fines that are not collected internally by Provincial Offences Court Administration staff (POA) are referred to collection agencies who charge a fee for their successful collections. Currently these fees are paid from the POA operating budget. An employee cost saving suggestion from the POA Collections Coordinator, recommended that we have the agencies collect their costs from the debtor. The Municipal Act allows for the authority to do this as long as the fees are reasonable and do not exceed an amount set by the municipality.
BACKGROUND:

The POA Office has staff who are responsible for initial collection procedures on delinquent fine payments. Once address and phone information is verified, first notices are sent out by the POA office to overdue accounts. Follow up phone calls are made and if these efforts fail final notices are sent out. At that point fines are referred to the collection agencies. Some larger fines follow court procedures. Typically, collection agencies will charge a fee of 15.9% for retail accounts and 10% for commercial accounts that they are successful on collecting.

Section 304 of the Municipal Act provides that “If a municipality uses a registered collection agency in good standing under the Collection Agencies Act to recover a debt, including taxes, payable to the municipality, the collection agency may also recover its reasonable costs of collecting the debt but those costs shall not exceed an amount approved by the municipality”.

ANALYSIS/RATIONALE:

The collection agencies used by the City are registered in good standing under the Collection Agencies Act. The legal authority exists for us to make the debtors pay for the cost of collection of their outstanding fines. Although 87% of the outstanding fine revenue is obtained through the internal collections process, the cost of collections on outside agency referrals is increasing and will exceed $50,000 in 2005. Other Municipal POA offices have had by-laws passed to require the debtor to pay the collection fee. Given these circumstances, it would be in the City’s best interest to pursue the option of allowing the collection agency to recover its’ costs from the debtor.

ALTERNATIVES FOR CONSIDERATION:

As an alternative to exercising its authority under section 304 of the Municipal Act, the City could continue to pay collection agency fees from POA office general fine revenues.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

In 2004, collection agency fees were $48,016. To date, in 2005, the fees are $51,104. Fees are only paid on accounts that are collected. At present, these costs represent lost revenue to the Municipality.

The by-law is worded in a generic form in respect of debts owed to the City. In this form, it would be useable in the collection of any City debt unless some other provision of the Municipal Act or other statute prevents use of collection agencies

The consent of the Ministry of the Attorney General must be obtained before the by-law can be used for Provincial Offences Act collections.
POLICIES AFFECTING PROPOSAL:

N/A

RELEVANT CONSULTATION:

Consultation was undertaken with:
- Legal Services
- Financial Services
- Other POA offices in Ontario
- The POA unit of Ministry of the Attorney General

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Evaluate the implications of your recommendations by indicating and completing the sections below. Consider both short-term and long-term implications.

Community Well-Being is enhanced. ☐ Yes ☑ No

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☑ Yes ☐ No

Collection Costs are transferred to those responsible for the debt.

Does the option you are recommending create value across all three bottom lines?
☐ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☑ No
CITY OF HAMILTON

BY-LAW NO. 06-

To Provide for the Recovery of Collection Agency Fees

WHEREAS Council desires to provide that the fees charged by registered collection agencies working on behalf of the City be recovered from the debtor as part of the debt, and the City from time to time retains such agencies at reasonable and approved rates for its collection including for fines and costs under the Provincial Offences Act;

AND WHEREAS the Municipal Act, S.O. 2001, Chapter 25, section 304 allows the recovery of registered collection agency fees at rates approved by Council on debts of the municipality;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. In this by-law the following definitions apply:
   (a) “City” means the City of Hamilton;
   (b) “Collection Agency” means a registered collection agency in good standing under the Collection Agencies Act and employed by the City for the collection of municipal debts;
   (c) “debt” means an amount assigned to the collection agency for recovery; and
   (d) “fee” means the amount of fee charged to the City by the collection agency at the rates approved in this by-law.
2. The Collection Agency shall include and recover a collection fee on the City debt assigned, calculated at the following rates:
   (a) ten percent (10%) of a debt owed by a corporation; and
   (b) fifteen point nine percent (15.9%) of a debt owed by an individual.

3. The collection agency fees provided for herein are in addition to any accumulations of interest, costs, disbursements or expense incurred on or for collection of the debt which are permitted to be added to the debt as provided for under statute, instrument, agreement or other entitlement to be added as a result of non-payment or collection efforts, including fees for the filing of writs, garnishment or debtor exams, and sheriffs costs.

4. Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council of the City that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

PASSED AND ENACTED this ______ day of ______, 2006 A.D.

_________________________________    ________________________________
MAYOR                        CLERK