

Provincial Zero Tolerance Policy for Social Assistance Fraud

(City Council on April 11, 12 and 13, 2000, amended this Clause by adding thereto the following:

“It is further recommended that:

- (1) the Province of Ontario be requested to include an appeal process in the legislation pertaining to the implementation of a lifetime ban for individuals convicted of social assistance fraud; and*
- (2) the Commissioner of Community and Neighbourhood Services and the City Solicitor be requested to submit a joint report to the Community Services Committee on what legal action the City of Toronto could undertake in this regard, such report to include an opinion on whether the proposed legislation to implement a lifetime ban for individuals convicted of social assistance fraud is ultra vires, having regard that it legislates into the Criminal Code area which is within federal jurisdiction.”)*

The Community Services Committee recommended to Council:

- (a) the adoption of the report dated March 8, 2000, from the Commissioner of Community and Neighbourhood Services; and**
- (b) that the Province of Ontario be advised that a lifetime ban for individuals convicted of social assistance fraud should not be implemented, in that such an action would cause untold suffering on people with severe mental and physical disabilities, and drug benefits coverage would be denied for people with terminal illnesses (such as AIDS).**

The Community Services Committee reports, for the information of Council, having:

- (1) directed that the City Solicitor, in consultation with the Commissioner of Community and Neighbourhood Services, be requested to report to the next meeting of the Community Services Committee to be held on April 19, 2000, on any ways and means available to the City of Toronto to appeal the provincial legislation on social assistance fraud, such as supporting an individual who has been cut-off social assistance as a result of the application of this policy, and further whether there are grounds in law to appeal; and
- (2) directed that the Commissioner of Community and Neighbourhood Services be requested to report to the Community Services Committee on:
 - (a) the 4,700 allegations where an overpayment was made without evidence of fraud;

- (b) the measures taken to date to reduce the number of overpayments without evidence of fraud; and
- (c) an analysis of how those overpayments were made and whether the number of overpayments could be reduced through improved administrative practices.

The Community Services Committee submits the following report (March 8, 2000) from the Commissioner of Community and Neighbourhood Services:

Purpose:

This report discusses the new zero tolerance policy for social assistance fraud that will be introduced in April 2000. Current provincial penalties for fraud convictions are reviewed initially. The process by which social assistance fraud is investigated by Toronto Social Services is then briefly described, and the incidence of fraud in Toronto's delivery system noted. Finally, the new provincial policy is outlined, and its potential impacts identified.

Financial Implications and Impact Statement:

There are no financial implications in the year 2000 resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) City Council support the Regional Municipality of Waterloo's resolution that the Provincial Government not proceed with the implementation of a lifetime ban for individuals convicted of social assistance fraud;
- (2) this report be forwarded to the Premier of the Province of Ontario, to the Minister of Community and Social Services and to the Association of Municipalities of Ontario; and
- (3) the appropriate City officials be granted the authority to take the necessary action to give effect thereto.

Background:

On January 18, 2000, the Premier announced that the Province would introduce "tough new measures to help end welfare fraud in Ontario," in the form of a new "zero tolerance" policy for social assistance fraud. Starting April 1, 2000, people convicted of social assistance fraud will be banned from receiving social assistance benefits for life. This includes benefits provided under both Ontario Works (OW) and the Ontario Disability Support Program (ODSP). The Province's new zero tolerance policy represents the first time in Canada a life time ban has been put into effect for those convicted of social assistance fraud. Regulations governing the new policy was released in late February 2000.

Toronto has always made safeguarding the financial integrity of the social assistance system a priority. An effective series of fraud prevention and control processes have been put in place by Toronto Social Services (TSS) over the years. Changes incorporated in the new OW and ODSP legislation and regulations passed have mandated that municipalities take additional steps to investigate and control fraud. In most cases, TSS had implemented these steps well prior to the legislation's passage. However, the new legislation also increases penalties for clients convicted of fraud.

It is in the context of the actions taken by TSS to reduce fraud, as well as the steps recently taken by the Province, that the new zero tolerance will be discussed. First, an overview of current Provincial policy is provided. TSS' fraud control and prevention strategies are then briefly described. The Province's zero tolerance policy is subsequently outlined. Finally, potential implications and effects of implementing the new policy are discussed.

Comments/Discussion:

(I) Current Approach to Fraud Control:

Current Provincial Policy:

Increased penalties for fraud convictions were incorporated in the Ontario Works Act (OWA). Under the Act, "Applicants, participants and dependents convicted of social assistance fraud will be ineligible to receive benefits for three months on first conviction and six months on subsequent convictions. When the period of ineligibility is imposed, the three and six-month time periods are mandatory and not negotiable."

Ontario's current penalties are already among the most severe, if not the most severe, in Canada. By comparison, in Alberta, there is no ineligibility period. A person convicted of fraud is still eligible for assistance if they are in need. Restitution is on a case by case basis, and varies according to the circumstances of the case and the court decision. In British Columbia, a recipient convicted of fraud may receive a three-month disqualification, although individual circumstances may mitigate this penalty. Quebec deducts a certain portion of the individual's benefit when clients are convicted of fraud, but the client remains eligible to receive assistance.

TSS Fraud Prevention and Control Strategies:

Allegations related to a client's eligibility for financial assistance, or to the level of entitlement a client is receiving, come from a range of sources, including front-line workers, special reviews of files conducted on high risk cases, or information provided through the fraud hotline or third parties. A secondary review worker, whose job it is to examine past and present eligibility for financial benefits, investigates allegations in each local office. A thorough review of the client's file is undertaken, and all pertinent information provided by the client is reconfirmed. Wherever possible, verification of this information is sought from independent third party sources, whether through information sharing agreements TSS has established with other government agencies (e.g., Revenue Canada), or through other services such as credit bureau services. Clients may also be contacted to provide additional information, or to explain any discrepancies.

In 1999, nearly 11,000 allegations were reviewed by the Division. A review may result in one of three main outcomes:

- (1) over 6,000 allegations, or nearly 60 percent of the total, were found to be untrue, or the information provided to the Division, often through the fraud hotline, was insufficient to complete a full review;
- (2) for nearly 4,700 allegations, or over 40 percent of the total, the review indicated that a client had been paid benefits above their level of entitlement, but there was no evidence of fraud; and
- (3) only in 350 cases, or 3 percent, of the total number of allegations, was there evidence of potential fraud.

It is clearly necessary to distinguish client overpayments from fraud. In most cases, client overpayments are not the result of fraud. However, prior to briefly commenting on overpayments, the report discusses the process by which potential fraud cases are pursued.

(A) Fraud Investigation:

How and whether potential fraud cases are referred for criminal charges involves a series of steps and decisions. Where a review conducted by a secondary review worker indicates possible fraud, the case is referred to the Division's centralized Fraud Control Unit. Cases are referred only if there is clear evidence of intent to defraud. As noted, in 1999, 350 cases were referred to the Unit.

The Unit then conducts a more intensive review of these cases. If evidence of fraud is sustained, cases are forwarded to the Special Review Committee (SRC), an arms-length body made up of representatives from the City of Toronto Police Fraud Squad, the Crown Attorney's Office, the City of Toronto Legal Division, and TSS's Fraud Control Unit.

The SRC meets regularly to review potential fraud cases, and determine what action will be taken, including criminal charges, civil action and/or other methods of overpayment recovery. In cases where there is sufficient evidence of fraud, the SRC recommends referral to Toronto Police Services for criminal charges.

In 1999, as a result of SRC referrals to the Police, 292 cases were referred for criminal charges. A small number of cases have not yet been resolved, and a number of cases were found not guilty or were withdrawn. One hundred and sixty-two fraud convictions have been obtained to date. This compares to a total of 747 convictions Province-wide. Clearly, while social assistance fraud is a serious offence, the incidence of such fraud is minimal, particularly compared to the size of the provincial caseload.

(B) Overpayments:

Overpayments to clients are the result of several inherent features of the social assistance system, most notably:

- the complexity and rapidly changing nature of legislation, regulations, policies and rules governing program delivery;
- the nature of the social assistance system has historically depended, to a large extent, on self-declaration;
- frequent changes in client's situations (e.g., variable part-time earnings);
- staff errors, or client errors in matters such as non-disclosure or delays in reporting changes in income or expenses; and
- time lines required to process information and/or misunderstandings related to program requirements.

In many cases, an overpayment is made due to some combination of the above factors. For example, an increasing number of clients currently work part-time. Hours and rates of pay often fluctuate significantly from month to month. As a program requirement, clients must report any changes in income. In this scenario, if income changes are not reported quickly, an overpayment may occur. In most situations like this, the client is not intending to defraud the system, or to misrepresent his/her circumstances. It is only in a small number of instances that overpayments are the result of fraud.

TSS reported to the former Metro Community Services Committee on the steps taken to reduce overpayments on a number of occasions throughout the 1990s. The Division has continued to improve its ability to minimize the frequency of overpayments, as well as to strengthen its capacity to recover overpayments from clients.

(II) New Provincial Policy Direction:

As of late February 2000, the Province released the necessary regulations to implement its zero tolerance policy, which will institute a life time ban for OW and ODSP recipients convicted of social assistance fraud, where the offence occurred in whole or in part on or after April 1, 2000. The regulations indicate that there are no mitigating factors. One conviction will trigger the ban. At this point, the Province has not released more detailed policy guidelines.

The following scenarios outline how the policy will impact different family units:

- if a single recipient is convicted, they will be permanently ineligible for social assistance;
- if a sole support parent is convicted, the recipient is permanently ineligible and assistance will continue for the children only;
- for a couple, if one spouse is convicted, the convicted spouse is permanently ineligible, and assistance will continue at a reduced rate reflecting removal of the portion that would have gone to the convicted individual if one parent; and

- for a couple with children, where both parents/guardians are convicted, assistance will continue for the children only.

The Province is including an insert with the April benefit month cheque that will inform clients of the new policy direction, and the date it takes effect.

Implications of Implementing the Proposed Zero Tolerance Policy:

The City has two related concerns about the Province's zero tolerance policy:

- the new policy is exceedingly punitive and represents a disproportional response to the problem of fraud within the social assistance system; and
- there are potentially adverse impacts for not only the individuals directly affected, but also for their families and children.

(A) Imposition of a Lifetime Ban from Receiving Social Assistance:

One long-standing and widely accepted test of the appropriateness of a sanction is the degree to which it is proportional to the infraction committed. In the context of the Canadian approach to matters involving criminal penalties, the proposed policy does not seem proportional to either the scale, or the gravity, of the problem of social assistance fraud in Ontario.

While social assistance fraud is a serious matter, it is not pervasive. Moreover, municipal delivery agents and the Province have historically directed substantial efforts to preventing and controlling fraud. The City's fraud hotline is indicative of the emphasis placed on detecting and pursuing fraud and misrepresentation. As noted, the OWA and ODSP introduced new mechanisms intended to strengthen the integrity of the social assistance program, in addition to introducing stringent penalties for those who have been convicted of fraud. It is also anticipated that the new Service Delivery Model proposed by the Province as part of the Business Transformation Process will provide additional caseworkers with new monitoring and verification tools, further minimizing the social assistance system's reliance on client self declaration.

On the other hand, the new policy permanently denies certain citizens access to a key part of the social safety net. Once banned for life from receiving social assistance, there is essentially no income support safety net for these individuals in Ontario. This is the case even though individuals convicted of fraud will have accepted and served the penalty imposed by the criminal justice system, which may include imprisonment and/or restitution. There is also little doubt that a criminal conviction in itself can negatively impact a person's prospects for a long period.

Lifetime bans from receiving social assistance are uncommon. However, a somewhat comparable situation exists in the United States. With the passage of new federal welfare legislation in 1996, American states were prohibited from using federal funds to provide benefits to families where an adult recipient has received assistance for more than a total of 60 months.

In certain states, lower lifetime limits have been enacted, restricting the total time on assistance to less than two years in one instance. As a result, families have begun to reach their lifetime limits.

If the state chooses, federal funds can be used to provide assistance beyond the total lifetime limit for up to 20 percent of the state's average monthly caseload. This provision recognizes that there is a proportion of the caseload that will have significant difficulty obtaining employment. States are also free to use their own funds to provide assistance to families in excess of the 20 percent limit.

But even for families that reach their lifetime limits, there are several potential options for continuing support. Perhaps most importantly, affected families may remain eligible for other federally funded welfare programs, such as foodstamps, Medicaid, and Supplemental Security Income, which provides benefits to people with disabilities and seniors.

Families also remain eligible for state delivered programs, which may provide different types of vouchers, as well as case management services to help families become self-sufficient. State programs do, however, vary significantly, and are very limited in some places.

While state approaches to enacting time limits differ substantially, recent reports from a wide range of state and federal sources indicate there is a growing concern that families not simply be pushed off of social assistance with no help and no where to go.

(B) Potential Effects of the Zero Tolerance Policy:

OW and ODSP are emergency programs, and are meant to serve as a "last resort" to people who have no other sources of income. Both programs meet basic needs, and provide basic necessities to those in need. Those individuals who can no longer access social assistance may be forced to rely on the shelter system, or face destitution or homelessness.

Families with children now make up over 55 percent of Toronto's OW caseload; single parent families alone comprise over 40 percent of the total. It is obvious that families, and children, will be impacted by the new policy. As the Region of Waterloo has stated in its assessment of the potential effects of the Province's approach: "Consequences of implementing such a policy, especially on families with young children, may include loss of accommodation, the inability of the family to adequately feed, house and provide other essentials for their children and the potential for children to be taken into care..." Preventing such consequences, where possible, will necessarily fall to municipalities and other local service providers.

Social assistance also continues to be a source of other key benefits for eligible low income people. Through a drug card, recipients have access to affordable prescription drugs. Certain other medical benefits are also available to social assistance recipients (e.g. costs of wheelchairs, prosthetic devices). Permanent loss of eligibility for these benefits may be particularly serious for disabled people, who may face life threatening situations if they cannot access income and other supports. Although disabled social assistance recipients are currently served under the

provincial ODSP, it will be municipalities which provide emergency supports to these individuals in the event they face critical problems.

Finally, with changes to social assistance made under the OWA, and with the increasingly limited direct service role played by Human Resources Development Canada (HRDC), the OW program is also the primary source of employment services and supports for eligible low-income persons. People banned for life will also permanently lose access to these important supports, potentially making it even more difficult for them to secure income through employment.

Conclusions:

Toronto Social Services is concerned that the Province's zero tolerance policy is unduly harsh and unnecessarily punitive, and will have potentially serious implications not only for individuals convicted of fraud, but also for their families and children. The Division believes that the current policies and penalties in place to combat social assistance fraud are appropriate and adequate.

Based on this position, this report recommends that City Council support the Regional Municipality of Waterloo's resolution (see Attachment No. 1) that the provincial government not proceed with the implementation of a lifetime ban for individuals convicted of social assistance fraud.

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Attachment No. 1: Regional Municipality of Waterloo's Resolution Concerning the Provincial Government's Policy Intentions on Zero Tolerance for Social Assistance Fraud

Regional Municipality of Waterloo

Health and Social Services Committee Report

To: Chair G. Sudden and Members of Health and Social Services Committee

Date: February 2, 2000

"Recommendation:

WHEREAS the Regional Municipality of Waterloo recognizes that the Ontario Works Program is an income security program of last resort; and

WHEREAS the allowance provided to social assistance recipients are inadequate to meet basic family needs of food, shelter and other daily necessities in many cases; and

WHEREAS there are existing penalties for social assistance fraud; and

WHEREAS a lifetime ban for social assistance fraud could result in extreme consequences for individuals and families such as loss of accommodation, inability to properly and adequately feed the family unit and breakup of the family unit; and

WHEREAS the implementation of a lifetime ban policy will lead to broader community issues and consequences and will likely in the long term be more costly to the Region and the Province;

THEREFORE BE IT RESOLVED that the Government of Ontario be petitioned to not proceed with the implementation of a lifetime ban for individuals convicted of social assistance fraud;

AND FURTHER THAT this resolution be forwarded to the Premier of the Province of Ontario and the Minister of Community and Social Services;

AND THAT this resolution be forwarded to all municipal and regional councils who have responsibility for Ontario Works Consolidated Municipal Service Management.”

The following persons appeared before the Community Services Committee in connection with the foregoing matter:

- Ms. Nancy Vander Plaats, Scarborough Community Legal Services;
- Mr. Colin Hughes, Toronto Campaign 2000;
- Ms. Stacey Papernick, Metro Networkfor Social Justice; and
- Ms. Josephine Grey, Lower Income Family Together.