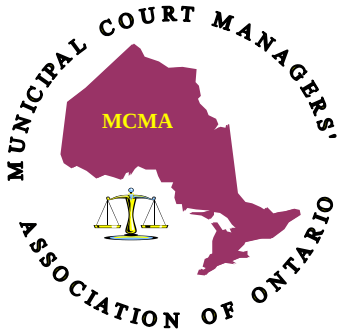




MCMA – POA Collections Committee Best Practices – **Certificate of Default**

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BACKGROUND: Certificates of Default / Civil Enforcement of Fines

Pursuant to section 68 of the Provincial Offences Act (POA) a Clerk of the Court may complete a Certificate of Default and upon filing with a court of competent jurisdiction shall be deemed to be an *order or judgment* of that court for the purposes of civil enforcement.

DEFINITIONS & ACRONYMS: Provincial Offences Act - POA
Certificate of Default - C of D
Civil Enforcement - CE

Upon filing of the C of D by the court of competent jurisdiction, you may then proceed with the issuing and filing of legal remedy documents within the civil court. Remedies include (but not limited to):

1. Examination
2. Notice of Garnishment
3. Writ of Seizure & Sale
4. Certificate of Judgment

More detail will follow under separate Best Practice document.

PROCEDURE:

Pursuant to section 68(1) of the Provincial Offences Act, (POA), a Certificate, (C of D) may be issued when the payment of a fine is in default. The Clerk of the Court may issue a certificate in the prescribed form as to the imposition of the amount remaining unpaid and file the certificate in a court of competent jurisdiction.

Upon filing the certificate with the court, the Certificate shall be deemed to be an order or Judgment of that Court for the purposes of enforcement.

The C of D does not expire however you will need leave of the Court if it expires after 6 (six) years (less a day) if no enforcement has been issued against the defendant, or some formal action done to keep the C of D active.

The collector will be required to either:

1. Bring a Motion to extend the C of D, or
2. Withdraw the C of D and reissue, depending on your local court administration.

Any C of D with a value less than \$25,000 shall be filed with the Office of the Small Claims Court and pay a filing fee of \$42.00 for each certificate filed.

Any C of D with a value greater than \$25,000 shall be filed with the Office of the Superior Court of Justice, no filing fee is required for these certificates.

Cost of enforcement: Any cost incurred in the enforcing the Court Order or judgment shall be added to the order or judgment and form part of it.

More than one (1) fine – The Clerk may complete and file one certificate under this section in respect to two or more fines imposed on the same person.

With the passing of the Good Government Act in 2009 S.O. 2009 c 33, the restriction of filing C of D with 2 years of being in default has been revoked, (Applicable to cases with due date of Dec 15th, 2009 and newer). As a result, POA Collection units need not worry about filing C of D on all accounts that meet their threshold criteria but, may consider filing C of D at a time when they are in a position to actively pursue legal remedies through the Civil courts.

The question about filing retroactively has not been tested judicially. You will have to satisfy yourself and establish a local practice.

ASSOCIATED DOCUMENTS/FILES:

Document/File Name	Location	Description
C of D single case	 Sample Template C of D.pdf	

Note:

There is significant debate among professionals regarding the priority of Certificates of Default issued by the Superior Court. There appear to be conflicting legal opinions regarding the Priority of an Order from Superior Court vs. that of the original conviction of the Provincial Offences Court. The discussions revolve around which Act or Court level has priority status.

For example, if a Defendant is in default of their conviction from POA offence and a Certificate of Default has been issued against that defendant and civil enforcement, i.e., Writ of Seizure & Sale or Garnishment etc. has been issued and filed in a court of competent jurisdiction and the defendant then applies for an Extension for time to pay, which proceedings takes priority, what process to follow.

There are opinions suggesting that; if there is an order issued by the Superior Court whether or not there has been any enforcement issued against the defendant, that no further action can be taken by the Provincial Offences Court, i.e. Extension Agreement unless the Superior Court matter is set aside or withdrawn. However, some judiciaries believe that they are within their authority to issues Extension Agreements even when a higher jurisdiction has issued process against the defendant on the same matter.

Each Municipality should contact their legal counsel to satisfy themselves as the appropriate position to take on this matter.

DISCLAIMER:

"The information provided is the interpretation of the members of the POA Collections Committee and do not necessarily reflect the opinions of MCMA. Any person relying on the information contained herein is doing so at his/her own risk and is advised to seek direction from his/her Municipality.

The MCMA does not endorse the use of any product or service. The information contained in the Best Practices procedures is provided as a reference tool to aid in the development of procedures in compliance with all applicable legislation. While every reasonable effort is made to ensure the information provided herein is accurate, there are no representations made with respect to the currency, accuracy or legality of the information. Due diligence should be performed when developing procedures."

Log of Changes

<u>Date</u>	<u>Specific Change</u>	<u>Editor</u>	<u>Reason</u>
May 10, 2019		Linda Beaver	Add to MCMA Template
Aug 1, 2019	Added Sample of C of D	Linda Beaver	