

MEMO / NOTE DE SERVICE



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TO: Community and Protective Services Committee

DESTINATAIRE : Comité des services communautaires et de protection

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SUBJECT: REVIEW OF PROVINCIAL PAWNBROKERS ACT

OBJET : RÉVISION DE LA LOI SUR LE PRÊT SUR GAGES PROVINCIALE

PURPOSE

At the meeting of Council on December 4, 2013, staff was directed to:

- review the *Pawnbrokers Act* and advise whether the Province should be approached to make amendments to it in order to more easily and efficiently put into place a municipal licensing scheme for pawnbrokers; and
- consult with the Ottawa Police Service and review best practices in other municipalities in responding to this question.

This memo provides an update on the work done in response to the direction.

BACKGROUND

1. What is a Pawnbroker?

A pawnbroker is defined in the provincial [Pawnbrokers Act, R.S.O. 1990](#) (*Pawnbrokers Act*, the *Act*) as someone “*who carries on the business of taking by way of pawn or pledge any article for the repayment of money lent thereon*”. In plain language, it is a business that lends money in exchange for personal property that can be sold if the loan is not repaid by a certain time.

2. How are Pawnbrokers Regulated?

In Ontario, pawnbrokers are subject to regulations set out in the provincial [Pawnbrokers Act](#). Key requirements are that they:

- obtain a license to operate from the municipality in which they are located, which must be renewed annually;
- post a security;
- display a sign on or over the front door that clearly indicates their business name and the word “pawnbroker”;
- display a visible notice inside the shop showing the rules for redemption of pawned goods, applicable interest rates authorized by law, and the maximum charges allowed under the *Act*;
- cannot operate on Sundays, public holidays or overnight;
- cannot accept goods from any person under 18 or under the influence of alcohol or drugs;
- if no identification is provided, must enter a note to that effect in the record;
- must issue a pawn ticket, which must be produced for redemption of the goods;
- cannot sell or dispose of goods within the time of redemption;
- keep records of:
 - the day, month and year in which the goods were taken in;
 - the name, address and a description of the person providing the goods;
 - a description of the goods sufficient to identify them; and
 - the sum lent; and
- report any suspicions that goods are stolen to the Police.

In Ottawa, pawnbrokers are licensed under the [Licensing By-law 2002-189](#), specifically under Schedule 14: Second-Hand Goods Shops.

Conditions for issuance of a license include:

- the applicant must be 18 or over;
- the required license fee is paid; and
- the premises complies with the zoning, building and property standards requirements of the City.

In addition, licensees must:

- post the license in a prominent location so as to be clearly visible;
- ensure their employees understand and comply with regulations, and be responsible for the acts of employees in carrying on the business;
- not obtain goods from anyone under 18 or under the influence of alcohol or drugs;
- obtain two pieces of identification, including one with a photo;
- maintain records (in a ledger book or a recording system approved by the Chief of Police) of:
 - the day, month, year and time of the transaction;
 - a detailed description of the goods, sufficient to identify them (with specific additional requirements for coins and collector cards);
 - the purchase price of the goods; and
 - the initials of the employee conducting the transaction;
- advise the Police of any tampering with serial, identification or model numbers or of any other suspicions that goods may be stolen or unlawfully obtained;
- make goods and transaction records available for inspection and/or removal by the Police during business hours; and
- retain goods for 30 days, separate from previously purchased goods.

DISCUSSION

1. Municipal Overview and Best Practices

Most municipalities license pawnbrokers under their business licensing by-laws as either pawnbrokers or second hand goods dealers. License conditions typically duplicate requirements under the *Pawnbrokers Act* or simply require compliance with it.

Some municipalities also:

- refuse to accept goods from sellers who do not provide the required identification;
- require employees to be licensed and undergo a police record check;
- require pawnbrokers to review a Police-generated electronic stolen property list weekly to determine if any goods sold to them are on it;
- require a video camera/recording system be installed;

- differentiate between low and high transaction dealers (including some that require high transaction dealers to maintain electronic records);
- have specific rules for certain goods; and
- require proof of liability insurance.

2. Issues and Concerns with the Current Regulatory Framework

- Pawnbrokers Act is outdated
 - Concerns have been repeatedly expressed by municipalities and law enforcement that the *Act* does not provide adequate tools to deal with stolen goods that move through pawn shops. Some work was done about ten years ago by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) and the Ontario Association of Chiefs of Police (OACP) to develop proposals for a modernized and expanded *Act*. These included a provincial licensing framework, a requirement for more detailed information on the seller/pawner and greater precision as to acceptable identification, a longer retention period for transaction records, a ban on advertising by pawnbrokers with respect to cash advances, and a mandatory automated data collection system for use in transferring transaction information to police services.
 - In 2007, AMCTO wrote to the Attorney General of Ontario again, urging a review and update of the *Act*, noting that many provisions are “*antiquated and unworkable*”.
 - In 2011, the OACP reiterated its call for a province-wide electronic transactions database to assist Police in identifying stolen goods. They pointed to a lack of resources available to sift through large volumes of manual records to identify stolen goods being moved through pawn shops and return them to owners.
 - Despite expected new legislation, none of the requested changes have been made.
 - The OACP has since notified the Ontario Attorney General and its member Chiefs of Police that given the intractability of the government on the issues raised, they would not be making any further efforts to pursue changes. “*At this point, we simply cannot ask our members to devote more of their valuable time and resources....on a public policy matter which the Ontario Government appears unwilling or unable to address.*”
- Privacy of personal information
 - In July 2007, the Ontario Court of Appeal (in *Cash Converters Canada Inc. v Oshawa*) invalidated parts of Oshawa’s by-law licensing second-hand goods dealers on the grounds of conflict with the *Municipal Freedom of Information and*

Protection of Privacy Act, 1990 (MFIPPA). The conflict centered on the collection of personal information on individuals pawning/offering goods for sale and its routine transmission to the Police.

- In September 2007, the Information and Privacy Commissioner (IPC) ordered the City of Ottawa (in IPC Order MO-2225) to cease collecting personal information from people selling used goods and to ensure the destruction of existing information.
- The IPC also issued guidelines about the form that municipal by-laws regulating pawnbrokers and second-hand goods shops should take (“[Privacy Guidelines for Municipalities Regulating Businesses Dealing in Second-hand Goods](#)”). The document notes that *“Second-hand goods by-laws that require the amassing of a large amount of detailed personal information into an electronic database, and transmission of this information to the police on a routine basis, without a warrant or judicial oversight, raise serious privacy concerns.”* The guidelines clarify parameters for the collection and use of personal information and limit what can be transferred to the Police in the absence of an actual investigation, and have created some uncertainty among municipalities with respect to how to achieve law enforcement objectives in terms of tracking stolen merchandise.
- The City subsequently amended Schedule 14 of its Licensing By-law ([ACS2008-CPS-BYL-0005](#)) to repeal certain provisions related to the collection and recording of personal information from customers. An electronic database in place to relay transaction data from pawnbrokers to the Ottawa Police Service (OPS) was also dismantled.
- The focus of data currently collected is now on the goods themselves, not the individuals providing them to dealers. This limits the usefulness of the information for tracking and investigative purposes.
- No province-wide electronic database
 - Pawnbroker transactions are generally recorded manually and submitted to police services manually. The large amount of information transmitted makes it difficult and time-consuming to identify suspicious and/or stolen goods, much less link them to specific crimes.
 - Current trends in the movement of stolen goods limit the usefulness of a local database, since merchandise moves freely from region to region to avoid detection. For example, goods stolen in Ottawa are often disposed of in Montreal.
 - Stolen goods are also increasingly moving via online platforms which have become a substitute for pawn shops for certain types of merchandise.

- There is a nation-wide database (through the Canadian Police Information Centre (CPIC)) that tracks stolen goods identifiable by serial number – vehicles, electronics, boats, bicycles, firearms, etc. It is searchable by the public, and based on information entered by local police forces on goods reported stolen. However, this database does not cover other types of stolen property. Data on vehicles is updated daily; property information is updated weekly.
- There is also an online “phone blacklist” database where consumers acquiring second-hand mobile phones can verify whether the item has been reported stolen based on its 15-digit IMEI number and/or block its use.
- Other municipalities, such as Hamilton, Markham, Kitchener/Cambridge and Richmond Hill, have automated systems in place which are managed by the local police to help ensure compliance with the *Pawnbrokers Act*.
- A local database is an option but will have limited effectiveness in assisting to identify and retrieve stolen goods unless identifiable features (such as serial numbers) are available. A local database would require the investment of resources of the development, implementation, maintenance and enforcement of the product, which are currently unavailable.

3. Input from Ottawa Police Service

Discussions with the Ottawa Police Service (OPS) following Council’s direction to staff resulted in a joint By-law and Regulatory Services (BLRS) and OPS enforcement blitz in December 2014. Fourteen pawn shops were inspected and more than \$4,000 in stolen goods recovered. Forty-eight summonses were issued with respect to violations of City by-laws and the *Pawnbrokers Act*, including charges related to improper record-keeping, storage of goods, signage, failure to comply with a police inspection and unlawful sale of tobacco products. Although the blitz generated some positive results in terms of the return of stolen goods to their owners and enhanced awareness of applicable rules, concerns have been expressed with respect to sustained compliance given available OPS and BLRS resources.

Recent feedback from OPS indicates that, given all circumstances, including but not restricted to, the most effective use of the investigative resources required, and the current state of legislation, staff will not be moving forward with another enforcement blitz at this time. It is also not feasible to pursue the creation of an automated database until the legislative issues are appropriately addressed.

CONCLUSION

To enhance the City's ability to address issues associated with pawnbrokers (and, particularly, the issue of stolen goods) would require modernization of the *Pawnbrokers Act*. The Province has not been willing to move forward with this change for the last several years.

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CC: Senior Leadership Team