

## Ontario Service Fees in 2017-18

### Key Points

- The Province changed 97 service fee rates in 2017-18.<sup>1</sup> The complete list of service fee rate changes is available on the FAO website at: <http://fao-on.org/en/Blog/Publications/service-fees>.
- The Province forecasts that it will collect \$2.9 billion in service fee revenue in 2017-18, an increase of 8.0 per cent from the prior year. This is up from the average annual increase of 6.5 per cent from 2011-12 to 2016-17. The faster pace of growth in 2017-18 is primarily due to a 12.0 per cent increase in vehicle and driver registration fee revenue.
- The Province charges services fees to recover part or all of the cost of providing a specific good or service. The FAO reviewed five service fee categories, representing 70 per cent of projected service fee revenue in 2017-18, to determine the rate of cost recovery for each service.
  - Revenue from vehicle and driver registration fees and civil court-related fees are projected to recover 85 per cent and 28 per cent, respectively, of the cost of providing the service.
  - Revenue from personal property security fees; Ontario incorporation/business fees; and birth, marriage and death registration fees are all forecast to be significantly greater than the cost of providing the service in 2017-18. These fees are projected to generate revenue that is 16 times the program cost for personal property security fees, 3 times the program cost for Ontario incorporation/business fees, and 1.5 times the program cost for birth, marriage and death registration fees. In total, the FAO expects that in 2017-18 the Province will collect approximately \$67 million in revenue beyond what is required to deliver these services.
    - Given the legal requirement that service fee rates should have a reasonable connection to the cost of the service provided, it is possible that these service fees may be vulnerable to a legal challenge.

### Background

The Province levies over 400 service, licence and permit fees (hereafter all referred to as service fees).<sup>2</sup> In 2017-18, the Province expects to generate \$2.9 billion in revenue from service fees, up from \$2.7 billion in 2016-17.

The annual Ontario budget includes a forecast for service fee revenue for the upcoming fiscal year but does not provide a comprehensive list of planned service fee rate changes. This backgrounder provides a list of 2017-18 service fee rate changes based on information provided to the FAO from the Province. It also includes a discussion of the growth rate of service fee revenue and a review of the cost recovery ratios for a selection of service fee categories.

<sup>1</sup> Based on information provided by Treasury Board Secretariat.

<sup>2</sup> Auditor General of Ontario, 2009 Annual Report, page 143.

## Service Fee Rate Changes in 2017-18

The Province changed 97 service fee rates in 2017-18.<sup>3</sup> The complete list of service fee rate changes is available on the FAO website at: <http://fao-on.org/en/Blog/Publications/service-fees>.

The Province introduced five new fees in 2017-18, primarily for services provided to commercial clients. The Province increased the rates of 90 existing service fees, ranging from hunting and fishing licence fees to permits for special events. On the whole, the rate increases tended to be significantly above the rate of consumer price inflation. The two eliminated fees were the Drive Clean emission test fee for light vehicles and the Wild Turkey Hunter Education Course fee.

### Service Fee Rate Changes in 2017-18

Type of Change	# Affected
New Fees	5
Rate Increase	90
Rate Decrease	0
Fees Eliminated	2

### Service Fee Changes by Ministry / Agency in 2017-18

Ministry / Agency	# Affected
Northern Development and Mines	72
Natural Resources and Forestry	8
Transportation	8
Government and Consumer Services	4
Environment and Climate Change	3
Education	1
Alcohol & Gaming Commission of Ontario	1

Source: Treasury Board Secretariat.

The Ministry of Northern Development and Mines changed 72 service fee rates, primarily related to geological surveys. The Ministry of Natural Resources and Forestry changed eight service fee rates, mainly cottage rental fees and log removal fees. The Ministry of Transportation changed eight service fee rates related to vehicle registration and drivers' licences. Lastly, the Ministries of Government and Consumer Services and the Environment and Climate Change changed four and three fee rates, respectively, while the Ministry of Education and the Alcohol and Gaming Commission of Ontario each changed one service fee rate.

## Growth in Service Fee Revenue

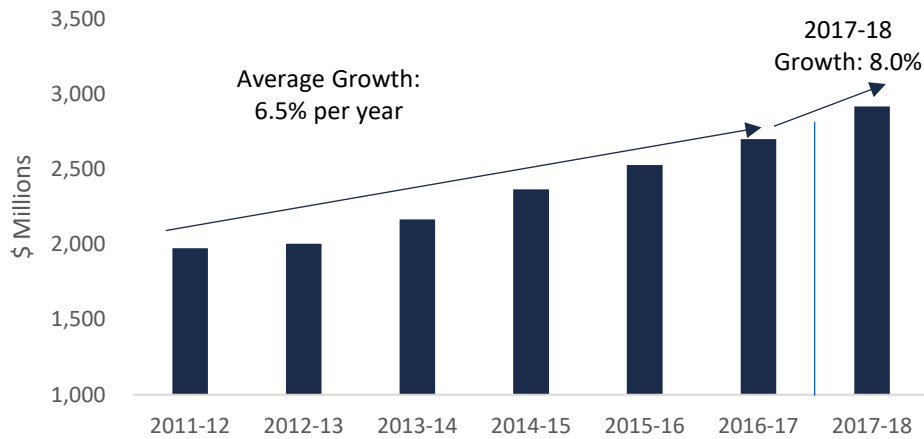
Service fee revenue<sup>4</sup> has increased at an average rate of 6.5 per cent per year from 2011-12 to 2016-17, primarily due to a 10.0 per cent average annual increase in vehicle and driver registration fee revenue.

In 2017-18, the Province projects service fee revenue to grow by 8.0 per cent. The projection for faster growth is largely due to higher anticipated growth in vehicle and driver registration fee revenue. Revenues from these fees are expected to increase by 12.0 per cent in 2017-18, up from the average annual pace of 10.0 per cent over the past five years.

<sup>3</sup> Based on information provided by Treasury Board Secretariat.

<sup>4</sup> These figures exclude service fees collected by hospitals, school boards and colleges.

## Growth in Service Fee Revenue



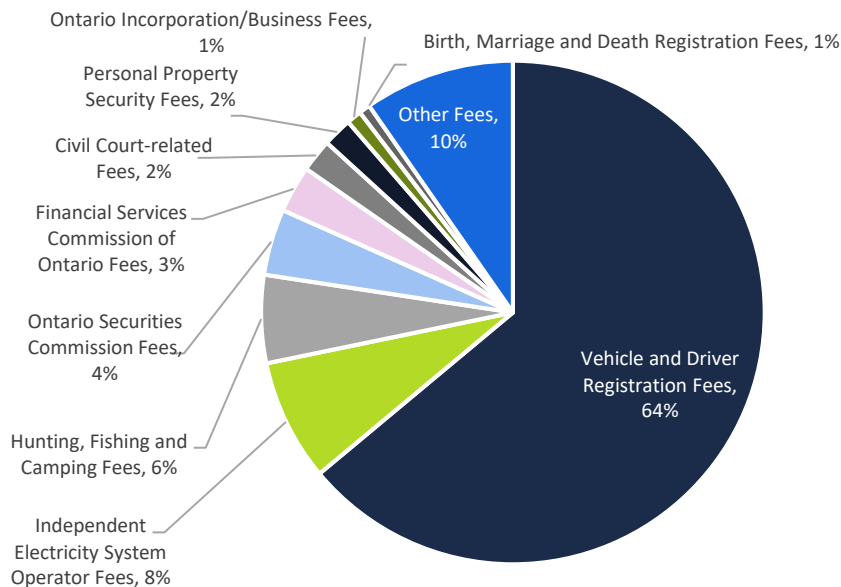
Source: Ministry of Finance, Public Accounts of Ontario and FAO.

Note: 2011-12 to 2016-17 amounts are from the Public Accounts of Ontario: Fees, Licences and Permits and Independent Electricity System Operator revenue under Miscellaneous revenue. 2017-18 amounts are a sum of Vehicle and Driver Registration Fees and Other Fees and Licences revenue from the 2017 Ontario Economic Outlook and Fiscal Review.

## What are the Main Sources of Service Fee Revenue?

In 2016-17, the Province generated \$2.7 billion in service fee revenue. The two largest service fee revenue categories were vehicle and driver registration fees, at \$1.7 billion, which made up 64 per cent of the total, and Independent Electricity System Operator fees, at \$211 million, which accounted for 8 per cent of total service fee revenue.

## Sources of Service Fee Revenue, 2016-17



Source: Public Accounts of Ontario 2016-17 and Treasury Board Secretariat.

By comparison, the next largest service fee revenue categories were hunting, fishing and camping related fees (6 per cent), fees charged by the Ontario Securities Commission (4 per cent), Financial Services Commission of Ontario fees (3 per cent), civil court-related fees (2 per cent), personal property security fees (2 per cent), Ontario incorporation/business fees (1 per cent), and birth, marriage and death registration fees (1 per cent).

## Cost Recovery

The Province charges service fees to recover part or all of the cost of providing a specific good or service.<sup>5</sup> The FAO reviewed five service fees categories, representing 70 per cent of forecast service fee revenue in 2017-18, to determine the rate of cost recovery for each related program or service. The service fee categories selected were vehicle and driver registration fees; civil court-related fees; personal property security fees; Ontario incorporation/business fees; and birth, marriage and death registration fees.

### Cost Recovery Ratios, 2017-18

	Program Cost (\$ Millions)	Fee Revenue (\$ Millions)	Portion of Cost Recovered
Vehicle and Driver Registration Fees	2,200	1,872	85%
Civil Court-related Fees	212	59	28%
Personal Property Security Fees	3	48	1,558%
Ontario Incorporation/Business Fees	7	23	305%
Birth, Marriage and Death Registration Fees	13	19	154%

Source: Treasury Board Secretariat and FAO.

For 2017-18, revenue from vehicle and driver registration fees is projected to recover only 85 per cent of the cost of providing the service. This implies that the Province could continue to increase vehicle and driver registration fees if it intends to fully recover the cost of the service.<sup>6</sup>

The Province's revenue from civil court-related fees is expected to recover only 28 per cent of the cost of providing the service in 2017-18. In 2016-17, the Province introduced a revised fee schedule for civil court-related fees, however, fee revenue is still \$153 million below what would be required to fully recover program costs.<sup>7</sup>

In contrast, the Province's projected revenue from personal property security fees; Ontario incorporation/business fees; and birth, marriage and death registration fees are all significantly greater than the cost to provide these services. These fees are projected to generate revenue that is 16 times the program cost for personal property security fees, 3 times the program cost for Ontario incorporation/business fees, and 1.5 times the program cost for birth, marriage and death registration fees. In total, the FAO expects that in 2017-18 the Province will collect approximately \$67 million in revenue beyond what is required to deliver these services.

<sup>5</sup> Auditor General of Ontario, 2009 Annual Report, p 143.

<sup>6</sup> In 2012, the Province announced that it would implement ongoing increases to vehicle and driver registration fees (see <https://news.ontario.ca/mto/en/2012/03/ontario-increasing-driver-and-vehicle-licence-fees-to-maintain-roads-and-bridges.html>). It is not clear if the Province intends to continue increasing fees to achieve full cost recovery.

<sup>7</sup> There may be policy reasons (e.g. users' ability to pay) why the Province may not fully recover the cost to provide a service. See Auditor General of Ontario, 2009 Annual Report, p 147.

The Province's ability to set service fee rates is constrained by law. Revenue from service fees must maintain a reasonable connection to the cost of providing the service.<sup>8</sup> If there is no reasonable connection between the two, then the fee may be found by a court to be a "tax" not authorized by statute and, as a result, the fee could be declared unlawful. Therefore, a service fee that consistently collects revenue in excess of the cost of providing the service could be vulnerable to a legal challenge.<sup>9</sup>

The Auditor General's 2009 Annual Report concluded that revenues for certain registration services collected by the Ministry of Government Services were at risk of a legal challenge because the revenues exceeded the cost of providing the services by approximately \$60 million.<sup>10</sup> The Auditor General's follow-up report in 2011 explained that the Province was developing a strategy to address the excessive cost recovery.<sup>11</sup> However, given that in 2017-18 the Province's expected revenue from personal property security fees; Ontario incorporation/business fees; and birth, marriage and death registration fees is still significantly higher than the cost of providing these services, some or all of these service fees may be vulnerable to a legal challenge.

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## About the FAO

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<sup>8</sup> See e.g. *Nylene Canada Inc v Amprior (Town)*, 2017 ONSC 795 at para 49, aff'd 2017 ONCA 726.

<sup>9</sup> The legal framework for service fees is based on several Supreme Court of Canada decisions: *Eurig Estate (Re)*, [1998] 2 SCR 565; *Ontario English Catholic Teachers' Assn v Ontario (Attorney General)*, 2001 SCC 15; *620 Connaught Ltd v Canada (Attorney General)*, 2008 SCC 7; *Confédération des syndicats nationaux v Canada (Attorney General)*, 2008 SCC 68. See also Auditor General of Ontario, 2011 Annual Report, p. 341.

<sup>10</sup> Auditor General of Ontario, 2011 Annual Report, p. 343.

<sup>11</sup> *Ibid.*