



Clause No. 8 in Report No. 8 of the Finance and Administration Committee was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting on November 19, 2009.

## **8**

### **PROVINCIAL OFFENCES ACT COURTS AMENDED INTERMUNICIPAL AGREEMENT**

**The Finance and Administration Committee recommends that the following report dated November 2, 2009, from the Chief Administrative Officer, be received and referred to the local municipalities for their input prior to the Committee's meeting of December 3, 2009.**

#### **1. RECOMMENDATIONS**

It is recommended that:

1. Subject to receiving the concurrence of all local municipal Councils, Regional Council authorize the Chair and Clerk to execute a new "York Region Courts Intermunicipal Agreement" reflecting the changes set out in this report.
2. Upon the execution of the new Intermunicipal Agreement, funding distributed to the local municipalities be increased from \$2.9 M to \$4.3 M in 2010 conditionally upon:
  - a. The Region retaining all revenues except those specifically resulting from local municipal prosecutions, and
  - b. The increased amount (\$4.3 M) being transferred from the Regional to local portion of the property tax bill starting in 2011.
3. Regional staff prepare and implement a communication plan outlining the property tax implications for 2011 in consultation with all of the local municipalities.

#### **2. PURPOSE**

The purpose of this report is to:

- i. Inform Committee and Council of changes that have occurred over time to the governance model of the Provincial Offences Act Program (POA);
- ii. Provide an update on consultation undertaken over the past three years;
- iii. Seek approval for the updating of the Intermunicipal Agreement (originally signed by all ten municipalities in 1999) to achieve a more accountable and sustainable governance model; and

- iv. Recommend additional funding of \$1.4 M in the 2010 budget to meet funding obligations originally set out in the transfer of POACourt responsibilities from the Province of Ontario.

### **3. BACKGROUND**

#### **York Region was a “demonstration site” for the transfer of POA Courts to municipalities**

As one of the earliest transfers (July 12, 1999), York Region worked with the Province to create a smooth transition with uninterrupted service to all stakeholders. The Region took over responsibility for an existing leased court facility at the Tannery Mall in Newmarket (three court rooms) and the success of the transfer was well documented and used as a model for subsequent transfers across the province.

#### **The original transfer required execution of two agreements – one between the Ministry of the Attorney General and Region of York and another binding all ten municipalities**

The “Transfer Agreement” that forms the basis for the Ministry’s transfer of POA Court administration to York Region is actually based on two agreements. A Memorandum of Understanding between the Region and the Ministry of the Attorney General sets out the service expectations of the Ministry. An “Intermunicipal Agreement” is stipulated in the Memorandum of Understanding and includes, as parties, all ten municipalities in the Region of York. The Intermunicipal Agreement, among other things, sets out:

- i. Revenue distribution
- ii. Reporting requirements
- iii. Prosecuting obligations
- iv. First Attendance obligations (i.e. local municipal responsibility for parking)
- v. Budgeting and staffing
- vi. Dispute resolution, etc.

The Intermunicipal Agreement also established a Joint Board of Management comprised of Council appointed staff (one) from each municipality.

#### **Original estimates of workloads, costs and revenues proved to be inaccurate**

Prior to the transfer, the Ministry of the Attorney General (MAG) had operated POA courts as part of a much larger portfolio of court services. A relatively small number of staff had been exclusively assigned to POA work, with a much larger number being involved in combined or shared duties for other levels of courts. Also, separate staff at the Ministry of Finance had played a very large role in the payment processing

operations, particularly through the Province-wide payment processing centre in Oshawa (which was subsequently closed).

The “embedded” nature of the Provincial operation made it difficult to accurately identify the number of staff needed to operate POA courts. Further projections were provided using statistics collected by the Provincial computer system (ICON) but these were of limited assistance to municipalities due to the fact that ICON was designed primarily as a case management system and not a financial forecasting tool.

### **POA Court services in York Region have been substantially improved over the past ten years**

POA Court services have grown to reflect growth in our communities and expanded to meet the service level goals set out by Regional Council. In 2002, additional courtrooms were opened at Yonge Street and Highway 7 in Richmond Hill. Since that time, the number of courtrooms has grown from three to eight. As well, additional resources have been applied to reducing the number of charges requiring court room time.

### **The Intermunicipal Agreement needs to be reconsidered based on current information**

In drawing up the agreement more than ten years ago, the ten municipalities used the best information of the time. In 2009, after ten years of practical experience running the program, more reliable data is readily available. In part this is due to some improvements being made in the reporting capabilities of the Provincial computer system. Also, municipalities have worked collaboratively to share best practices and undertake benchmarking initiatives, e.g. by creating performance indicators for POA courts through the Ontario Municipal Benchmarking Initiative (OMBI) process.

There have also been some emerging trends over the past ten years that probably could not have been predicted even if better data had been available at the time of transfer. For example, the tendency to dispute charges, particularly in the GTA, has increased dramatically in recent years and created extra strain on court resources. Case law has also evolved in ways that impact POA operations (e.g. the early resolution system known as “First Attendance” now requires extra administrative steps, there are now more transcripts being requested than ever before, etc.). Current trends and performance metrics are much more reliable than the outdated 1999 estimates which formed the basis for the original Intermunicipal Agreement.

#### **4. ANALYSIS AND OPTIONS**

##### **Joint Management Board's authority was unclear**

Regional Council has direct responsibilities for funding and administering the program, pursuant to the Transfer Agreement with the Province (made under Part X of the Provincial Offences Act). However, the wording in some sections of the Intermunicipal Agreement can be construed to suggest that staff members sitting on a "Joint Board" were given additional or separate authority with respect to key governance functions such as the approval of budget. Given that Regional Council has ultimate control over the resources in question, this created some ambiguity as to the role of the Joint Board. In the first four years after the transfer (1999 to 2003) the Joint Board reviewed and formally approved the budget before it was submitted to the Regional Treasurer for inclusion in the Region's normal budget process. In 2004, the Joint Board did not approve the budget, but Regional Council subsequently reviewed and approved it in the normal manner. Every budget since 2004 has proceeded through the Region's normal budget process.

##### **Original revenue sharing arrangement created a Regional tax burden**

The Intermunicipal Agreement in York Region contains a unique revenue sharing model which shares GROSS revenue rather than NET revenue. This means that the payments made to partner municipalities have no relationship to the actual operating costs of the program. Although the program has created a modest surplus in every year of operation, that surplus is not sufficient to cover the payments made to partner municipalities and a tax burden is therefore created. In 2004, Regional Council approved a budget that capped the payments to the local municipalities at a total of \$2.9 M per year. That cap has remained in place in all subsequent years, including the 2009 budget approved by Council.

##### **An independent review was conducted on behalf of all ten municipalities**

In 2005, PSTG Consulting Inc. was engaged to review the efficiency of the POA court operation in York Region and make recommendations for future management of the program. The review was steered by a committee representing the CAOs of the nine local municipalities and the Region. The final report was completed in January 2006 and contained the following key recommendations:

1. That the revenue distribution model be changed and revenue distribution be capped until such time as the operating deficit is eliminated.
2. Joint Board to be replaced by a broader advisory group of stakeholders (no budget approval powers) with operating responsibility vested in the Region.
3. Pursue a number of prosecutorial efficiencies; improve outstanding fine collection and agree on performance indicators for measuring progress.

### **The independent review of consultants' recommendations have been largely implemented**

While the vast majority of recommendations have been implemented there were two principle areas to be addressed; governance and revenue sharing. During the review by PSTG, the CAOs determined that to address the governance issues the Joint Board should first suspend its activities pending final recommendations. The last Joint Board meeting took place on October 27, 2006 and the first meeting of the new Stakeholder Group was held on October 10, 2007. There have been five meetings to date.

The current revenue sharing arrangement (as described in the Intermunicipal Agreement) has been capped at \$2.9M per year since 2004. Since that time, efforts have been made to improve upon the efficiency of court administration to further reduce the operating deficit for this program.

In 2008 (the last full year for which actual costs are available), the operating costs for POA Courts in York Region was \$8.448 M. Revenues were \$9.164 M, leaving a modest surplus of \$716,000. After distributing \$2.9M of gross revenues to local municipalities, the program operated with a \$2.2M deficit.

### **Three options were considered to replace the current model of revenue distribution**

The three options considered for revenue distribution include:

- i. Distribute only the net revenue (\$716,000 in 2008).
- ii. Maintain the status quo (\$2.9 M capped – an amount currently in the Regional base budget).
- iii. Distribute the amount provided for in the current agreement (\$4.3 M in 2008 – this would require a tax levy increase of \$1.4 M).

In addition, the alternative of replacing the revenue distribution to local municipalities with a one time adjustment of proportional tax billings was proposed. This would maintain the revenue source that municipalities had become accustomed to and relied upon, in part, to offset bylaw enforcement costs.

### **Local municipal staff favour an increase from \$2.9 M to \$4.3 M (per the agreement) in 2010 with the amount then transferred from the Regional portion of the tax bill to the local municipal portion in 2011**

Consultation with all local municipal staff has resulted in a further option. The suggestion is that the revenue distribution from POA Courts be adjusted in 2010 to better reflect the amounts in the original agreement. Relying on the last year for which actual figures are available (2008), the amount would increase from \$2.9 M to \$4.3 M. The amount would be distributed in proportion to the overall assessment as set out in the

Financial Implications of this report. The additional amount (\$4.3 - \$2.9 = \$1.4 M) was not considered in the preliminary Regional tax levy budget for 2010 presented to Council on October 22, 2009. The additional amount translates into a 2010 budget increase of \$1.4M or approximately 0.2%.

It is further suggested that revenue distribution to local municipalities cease in 2011 and be replaced by a transfer of \$4.3 M from the Regional portion of the tax roll to the local municipal portion. This would conclude an era of annual deficits in the operation of POA Courts and restore a more typical program funding outlook. This action would require a clear communication plan to outline the “zero net” tax levy implications in 2011.

**It is further recommended that the existing Intermunicipal Agreement be replaced to give effect to the changes in revenue distribution**

It is recommended that the Intermunicipal Agreement be amended to reflect the following changes:

- i. The distribution of revenue to local municipalities (beyond these revenues resulting from their own prosecutions) cease in 2011 and be offset with a one-time adjustment to tax levy billings, reallocating \$4.3 M from the Regional billing to the local municipal billings in proportion to their overall assessed value.
- ii. The Joint Management Board and its governance responsibilities be deleted from the agreement and role of the POA Stakeholder Group be reaffirmed and continued.

The revised agreement will require execution by all ten municipalities. Upon confirming the authorization of all nine local Councils to execute the amended agreement, the increased 2010 revenue distribution can be confirmed.

**Relationship to Vision 2026**

Administration of the POA Courts in York Region addresses two of the Vision 2026 goals:

**i. Infrastructure for a growing Region**

The caseload of Court Services has doubled since the program was downloaded from the Province in 1999. Regional Council has made significant investments in the administration of justice by adding further courtrooms, support staff and other resources. A safe community continues to be high on residents' priorities according to surveys.

**ii. Engaged communities and a responsive Region**

The Region's Court Services Branch continuously responds to the emerging community needs of the nine local municipalities by providing the court resources needed to handle a wide range of regulatory issues (including road traffic, environmental safety, community health, building code, fire code, etc.).

## 5. FINANCIAL IMPLICATIONS

### A new revenue sharing arrangement is proposed

A new arrangement is now proposed wherein the Region will remain fully responsible for all costs of the program and will, after 2010, retain the net revenue after costs are covered. It is proposed that only the revenue directly related to prosecuting local municipal charges will be transferred to the applicable local municipality

In order to replace the lost revenue source for local municipalities an arrangement has been developed to adjust tax rates between the two tiers in 2011.

In effect, the two municipal levels would exchange tax room by restating the 2010 tax rates to reflect a lower tax rate for the Region and a higher rate for the local municipalities. This would result in higher tax revenues for the local municipalities to offset the loss of revenue from POA payments.

Table 1 illustrates the impacts of this transfer.

TABLE 1

|                        | <b><u>2010 POA Revenue Distribution</u></b> |                                  |                                  |                     |                   |
|------------------------|---|----------------------------------|----------------------------------|---------------------|-------------------|
|                        | <b>2008 Regional<br/>Taxation</b>           | <b>% of total<br/>Assessment</b> | <b>Proposed 2009<br/>Funding</b> | <b>2009 Funding</b> | <b>Difference</b> |
| Aurora                 | 33,679,121                                  | 4.82%                            | 209,641                          | 141,500             | 68,141            |
| East Gwillimbury       | 14,092,490                                  | 2.02%                            | 85,940                           | 58,006              | 27,934            |
| Georgina               | 21,246,380                                  | 3.04%                            | 128,910                          | 87,009              | 41,901            |
| King                   | 17,788,655                                  | 2.55%                            | 108,944                          | 73,533              | 35,411            |
| Markham                | 195,308,170                                 | 27.95%                           | 1,208,801                        | 815,893             | 392,908           |
| Newmarket              | 45,434,150                                  | 6.50%                            | 280,390                          | 189,252             | 91,138            |
| Richmond Hill          | 125,568,033                                 | 17.97%                           | 775,629                          | 523,519             | 252,110           |
| Vaughan                | 222,440,853                                 | 31.83%                           | 1,393,268                        | 940,401             | 452,867           |
| Whitchurch-Stouffville | <u>23,223,148</u>                           | <u>3.32%</u>                     | <u>148,876</u>                   | <u>100,485</u>      | <u>48,391</u>     |
| Total                  | 698,781,000                                 | 100.00%                          | 4,340,399                        | 2,929,598           | 1,410,801         |

In 2011, the Region would reduce its tax rate by approximately 0.003202% to reflect that it no longer shared the POA revenues and each municipality would increase their rate by the same amount. This could be done either after all tax rates have been established or before.

## **6. LOCAL MUNICIPAL IMPACT**

The Joint Board of Management which formerly was in place has been disbanded since 2005. Since that time, day-to-day operations have been managed within the Regional organization structure. The issues and needs of local municipalities are addressed through the Stakeholder Group. Stakeholder consultation meetings have already proven effective to convey improvements requested in the program administration. Participation in the group gives local bylaw enforcement staff the added benefit of consultation with Police and other Provincial Offences officers.

## **7. CONCLUSION**

The proposed change in the governance model is consistent with conventional governance models and practices across the Province in addressing accountability for the program and provides a clear understanding of day-to-day management and business planning. The model also ensures that stakeholders are consulted and their needs are taken into account on matters which affect them.

The Senior Management Group has reviewed this report.