



SUBJECT: 2021 Halton Court Services business plan and budget
TO: Corporate Services, Strategy, Risk & Accountability Cttee.
FROM: Legal Services Department

Report Number: L-03-21

Wards Affected: All

File Numbers: 215-08

Date to Committee: February 3, 2021

Date to Council: February 16, 2021

Recommendation:

Approve the 2021 Halton Court Services (HCS) budget as presented; and

Approve a cost-recovery collections fee of \$30.00 to be added to all defaulted fines effective January 1, 2021, and the collections fee to be reviewed every three years thereafter; and

Contribute \$50,000 from net revenues to the capital reserve fund during 2021 to ensure that requirements of the capital reserve fund policy are met; and

Approve \$40,000 for additional A/V equipment to deliver virtual court and remote interpretation solutions as per provincial requirements due to the pandemic funded through the capital reserve fund; and

Amend the memorandum of understanding and local side agreement to reflect the transfer of part three *Provincial Offences Act* (POA) prosecutions from the Ministry of Attorney General (MAG) to the municipal partnership; and

Approve the hiring of one Prosecutor to manage the download of responsibility from the province for the prosecution of part three offences; and

Approve the conversion of one part-time Case Administrator to one full-time position to manage the download of responsibility from the province for the case administration of part three offences; and

That recommendations 5, 6, and 7 above be subject to the terms of the transfer of responsibility for part three prosecutions being determined/clarified by the Province and

its municipal partners, and HCS staff reporting back to the joint management board (JMB) on the following:

- (i) amending the memorandum of understanding and local side agreement to reflect the transfer of part three POA prosecutions from MAG to the municipal partnership, and
- (ii) the staffing implications required to manage the download of responsibility from the province for the prosecution of part three offences, and
- (iii) the financial implications of the transfer of the prosecution of part three offences including mitigation opportunities; and

Direct HCS staff to report back to the JMB following the first quarter of 2021 on the status of the budget.

PURPOSE:

To provide a 2020 update on the administration of HCS, an overview of the 2021 Business Plan (BP) and budget, and an update on emerging issues and/or initiatives that will have an impact on HCS operations and/or budget.

Background and Discussion:

In keeping with the Inter-municipal Agreement between the City of Burlington (City), the Towns of Halton Hills, Milton, Oakville and the Region of Halton, the City is required to provide its partners with an annual BP and budget for HCS.

The 2021 BP was completed in August and projected gross revenues are based on the budgeted revenue for 2020, rather than actual revenue, given that 2020 has been an anomaly due to the pandemic. The BP and budget have been reviewed and approved by the JMB and the ATs. *A copy of the 2021 BP is attached as Appendix A to this report.*

This report highlights third quarter financial results resulting in some variation in numbers and projections provided in the BP.

Overview of 2020 Financial Performance

Budget

Following are the financial results for HCS at end of third quarter:

- Gross revenues of \$4,670,198 (42.8% of budget)
- Overall expenditures of \$4,272,168 (68.2% of budget)
- Year-to-date net revenue of \$398,030 (8.6% of budget)

Audits

An audit of HCS was performed by KPMG between March and October 2020 for the period ended December 31, 2019. There were no items of concern to report to the Partnership by way of an auditors' management letter.

An internal audit was not conducted during 2020.

Charges Filed

A total of 49,530 charges (71.6% of target) were filed with HCS by end of third quarter and it is expected that charges will reach 88.9% of target (61,500) by year-end.

2021 Performance Projections

Overall Revenues

The Municipal Partners are projecting gross revenues based on the projected revenue for 2020. Although population continues to grow at a fair rate across Halton, the number of charges filed by local enforcement agencies has remained fairly constant for the last few years; the result being only a slight increase in annual projections that reflect past enforcement patterns.

Gross revenue for HCS in 2021 is budgeted at **\$11.1 million** as compared to **\$10.9 million** during 2020.

The **2.0% increase in revenue** can be attributed primarily to the slight increase in projected number of charges and to the implementation of a \$30.00 collections fee to all defaulted fines.

Overall Expenditures

Total expenditures in 2021 are budgeted at **\$7.0 million** compared to the **\$6.2 million** budgeted for 2020. This represents an overall **increase of 13.6% in expenditures**. Most of this increase can be attributed to pandemic-related expenses, the download of Part Three prosecutions and a significant increase in facility-related expenditures. *A detailed description of these expenses is included on pages 10, 14 and 15 of the BP.*

Overall Net Revenues

Currently the net revenue budget for 2021 is **\$4.65 million*** (after contribution to and from Reserve Funds) which represents a 0.0% decrease in net revenue over the 2020 budget.

* The decision to draw from the Stabilization Reserve Fund is under review (see Recommendation 8 above) and the JMB has directed ATs to conduct a review of the current net revenue cap with a view to possibly amending it once HCS staff report back to the JMB on first quarter 2021 budget results.

See Appendix A of the 2021 Business Plan for a copy of the overall 2021 POA Budget.

Writing-off of Uncollectable Defaulted Fines

In accordance with the Write-Off Policy, the Municipal Partners sought approval from the ATs and the JMB to write-off those defaulted fines that have accumulated during 2020 where it has been determined there are no viable means of collection. The ATs and JMB approved write-offs scheduled during 2021 totalling approximately 988 cases with a total value of approximately \$412,600.

Stabilization Fund and Flat-Lining Net Revenue Distribution

The ATs drafted a Municipal Partner Revenue Stabilization Fund Policy in 2014 to assist the partners in protecting against the impact of volatility in fine revenue and to provide a source of funding to stabilize revenue sources annually. Per policy, an annual review of the Stabilization Fund is carried out by the ATs.

Net revenue in excess of budget for the years 2013 to 2017 was transferred to the Stabilization Fund. Interest is allocated on an annual basis. The ATs directed that funds be drawn from the Stabilization Fund during 2019 and 2020 if there is a shortfall of actual net revenues as compared to the 2018 net revenue budget. *Refer to page 11 of the BP for a detailed report on the Stabilization Fund.*

The JMB has directed the Area Treasurers (ATs) to review the current cap that is in place for annual revenue distribution (\$4.7m) resulting in a continued annual draw on the Stabilization Reserve Fund and to report back to the JMB in advance of the preparation of the proposed 2022 HCS budget.

Capital Reserve Fund

With interest income it is projected that the Capital Reserve Fund balance will be approximately \$325,390 at the end of 2020. As per approval, the ICON Server Upgrade project was completed at a total cost of \$27,488 and the Remote Interpretation initiative was postponed and incorporated into the plans for the virtual court system during 2021.

The Municipal Partners regularly conduct an annual review of the Capital Reserve Fund to ensure that future capital cost requirements are reflected and that the required minimum balance of \$300,000 is maintained. The Municipal Partners are recommending that the minimum contribution of \$50,000 continue to be made to the Capital Reserve Fund during 2021.

The Municipal Partners are recommending that a total of \$40,000 in expenditures during 2021 be approved for the additional equipment required to finalize a virtual court/remote interpretation solution in all courtrooms as mandated by MAG. *Refer to pages 11-12 for further details about the Capital Reserve Fund.*

Review of Operation and Finances

Given that the Municipal Partnership has been responsible for the delivery of Halton POA court services for 20 years, the JMB supports the recommendation of the ATs to

undertake a review of HCS through an external party. The review will include, but is not limited to:

- (i) development of operations and recommendations related to service delivery, long-term financial sustainability and governance, and
- (ii) funding for the review to a maximum of \$100,000 be provided from the Stabilization Reserve Fund, and
- (iii) a draft Terms of Reference for the review be prepared for consideration and approval by the JMB inclusive of project management structure and timing.

Emerging Issues and Initiatives

1. Proposed Recommendations to Offset Increasing Cost of Court Operations

The Municipal Partners have raised concerns about the ongoing increase and long-term cost implications related to the operation of the Halton POA court. This concern is shared by all POA courts across the province as overhead costs, including significant increases in cost recoveries by the province, continue to rise while the majority of POA fines and fees have not increased since 1994.

The Municipal Court Managers Association (MCMA) representing all POA Court Managers forwarded a report to MAG in January 2017 which:

- highlighted these shared concerns, and
- stressed the need for current fees to be increased to align with actual and current costs of operating POA courts, and
- listed a number of recommendations.

After several follow ups, the MCMA Board was advised in early 2020 that the Report had been rejected in its current form. MAG had only analyzed current fees and considered the proposed increase in various fees to be too high and not reasonable. The proposal for additional fees also contained in the Report have not yet been considered by MAG. As a result, and in consideration of the pending *Bill 177* reforms which will likely alter or have an impact on cost recovery analysis, the only fee being reviewed by MAG is the fee for sentence in absentia convictions. MAG has advised that the report will need to be updated, reformatted and re-presented for consideration. Work on this initiative has been temporarily paused due to the pandemic.

2. Transfer of Part Three POA Prosecutions to Municipalities

As reported previously, the Municipal Partners were advised by MAG in August 2017 that the Province intends to transfer the responsibility for prosecution of Part Three POA matters to municipalities. This transfer will have an impact on the overall HCS budget.

A Transitional Planning Working Group (TPWG) was formed in early 2020 to bring together municipalities across Ontario and MAG to ensure essential components are put in place for an effective transition from planning to implementation stage. Burlington and Oakville staff have attended meetings on behalf of the Municipal Partners and further meetings have been paused due to the pandemic.

In response to feedback and advice from the TPWG, MAG provided drafts of an amended Memorandum of Understanding and Local Side Agreement in July. City staff, on behalf of the Municipal Partners, are currently reviewing the proposed Amending Agreements, and will provide TPWG with feedback and any follow up questions which will be collectively communicated to MAG.

The Municipal Partners recommend entering into the Amending Agreements with a transfer date no earlier than July 1, 2021. The Municipal Partners will report back in 2021 once the Part Three download date is finalized.

The expansion of prosecution services will have an impact on staff resources. The Municipal Partners are seeking approval to recruit one additional Prosecutor and to convert the part time Case Administrator position to full time. As a result, the 2021 budget includes the additional cost for one full time Prosecutor and one fulltime Case Administrator pro-rated to reflect a hire date mid-year. *Refer to pages 14-15 of the BP for further details about the transfer of further responsibilities for prosecution and need for additional prosecution staff.*

3. **Recent Passing of *Bill 177 – Modernization of POA Courts Initiative***

As reported previously, *Bill 177* received Royal Assent in December 2017 which includes a proposal to amend current legislation to allow for the transfer of authority and scope of administrative functions from the local judiciary to court administration including:

- administering and entering convictions for all cases where defendants have failed to select an option, and
- reviewing and granting of all applications for extension of time to pay, and
- reviewing and granting of applications for re-opening of cases.

It is expected that these additional responsibilities will require a review of workload distribution to ensure that court administration continues to manage and deliver efficient and effective services. A provincial Working Group was struck to develop regulatory amendments and required additions to POA reforms regarding administration functions, forms and responsibilities. All activity was paused in March due to the pandemic and work resumed in the fall with the expectation that the passing and implementation of the regulations will occur sometime in early

2021. The Municipal Partners will report back when further details become available along with any impacts on administrative processes at HCS as a result.

4. **Recent Passing of *Bill 197 – COVID-19 Economic Recovery Act, 2020***

On July 21, 2020, *Bill 197* received Royal Assent. As a result, there are a number of amendments to the *Provincial Offences Act* (POA) in effect which have an impact on POA Court procedures and protocols including:

- allowing defendants to request a trial, in Early Resolution courts by mail or other electronic method permitted by the courthouse; and
- allowing defendants and prosecutors to conduct Early Resolution meetings remotely in all cases; and
- allowing any participant, including a Clerk of the Court, witness or Justice of the Peace, to attend any proceeding remotely by audio or video, unless the presiding judicial official orders otherwise.

These amendments, among many others, will require HCS, in consultation with the judiciary, to make greater use of technology to deliver justice services remotely. This is critical to the court system given the current pandemic situation. MAG has mandated various court guidelines and technology requirements which are in the midst of being implemented at HCS. Audio court hearings are currently being conducted for eligible hearings and video court hearings will be introduced in April 2021 for all trials. *Refer to page 16 of the PB for further details around amendments and plans for the implementation of remote court hearings at HCS.*

5. **Automated Speed Enforcement**

The *Safer School Zones Act, 2017* received Royal Assent in May 2017, allowing municipalities to use Automated Speed Enforcement (ASE) camera technology to enforce speeding offences in school zones and community safety zones.

Evaluation of data from various municipalities, including Oakville and Burlington, has identified that ASE would not be a revenue generating program given the significant number of charges from a single camera location; resulting in adverse impacts on staffing, judicial resources and POA courtroom scheduling capacity, which has already been impacted by the court closures relating to the pandemic.

Contrary to ASE operating as a net cost program, its implementation will:

- raise financial risks of levy impact to participating Municipal Partners, and
- increase risk of impact on POA net fine revenues, and
- raise other practical concerns which have been intensified by challenges created by the pandemic.

The Municipal Partners recommend a period to allow for an assessment of the impact of the pandemic on court operations and resources before implementation of the ASE program. The Municipal Partners will report back as new information becomes available.

Financial Matters:

Total Financial Impact

The 2021 HCS budget includes a net revenue projection of \$4.65 million.

With interest income it is projected that there will be a Capital Reserve Fund balance of approximately \$325,390 at the outset of 2021 and a closing balance of \$341,900 at the end of 2021. The Municipal Partners are proposing that the minimum contribution of \$50,000 be made during 2021 and that expenditures of \$40,000 be made.

With interest income it is projected that there will be a Stabilization Fund balance of \$2.99 million at the outset of 2021 and a closing balance of \$2.40 million at the end of 2021 if there is a need and agreement to cap net revenues to reflect 2018 net revenues.

Source of Funding

Not applicable

Other Resource Impacts

Not applicable

Conclusion:

Staff request that the recommendations as set out in the 2021 Business Plan as highlighted in this report be approved.

Respectfully submitted,

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Appendices:

A. 2021 POA Business Plan and Budget

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.