
HALDIMAND COUNTY

Report LSS-11-2022 Provincial Offences Downloading to Municipality and Staffing Requirements



For Consideration by Council in Committee on June 21, 2022

OBJECTIVE:

To provide a Provincial Offences Administration update regarding the Ministry of Attorney General (MAG) services that have been downloaded to the County, new court requirements, COVID-19 impacts and associated staffing requirements to comply with the Memorandum of Understanding with MAG for the provision of these services.

RECOMMENDATIONS:

1. THAT Report LSS-11-2022 Provincial Offences Downloading to Municipality and Staffing Requirements be received;
2. AND THAT 1.0 permanent full-time employee (FTE) for the position of POA Coordinator be approved as outlined in Report LSS-11-2022;
3. AND THAT the associated costs in 2022 related to the approval of the permanent full-time position (POA Coordinator) be identified as a negative variance in the 2022 Tax Supported Operating Budget;
4. AND THAT the above position be included as an ongoing Council-Approved Initiative as part of the 2023 Tax Supported Operating Budget.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Haldimand County has been responsible for the administration of Provincial Offences since early 2001, when it was downloaded from the province. An executed Memorandum of Understanding (MOU) and Local Side Agreement (LAS) with the Ministry of Attorney General (MAG) outlines the responsibilities of the parties including that MAG continues to be responsible for the integrity of the administration of justice while the County is responsible for all court administration, support functions and prosecutions of matters commenced under Parts I and II under the *Provincial Offences Act*, 1997.

For the most part, the direction from MAG has been somewhat stable (other than an ongoing shortage of Justices of the Peace) with minimal changes throughout the years. The main driver of the workflow, in previous years, had been the ebb and flow in ticket volumes with staffing levels adjusted accordingly.

In 2021, as part of the Operating Budget, the Corporate & Social Services Department was reorganized which reduced the number of full-time POA staff from three positions to two positions through attrition based on work volumes and processes at that time. Since the reduction in staff, two matters have come up which significantly impact on workload:

1. the County as well as all other municipal operated POA offices received notification that MAG was downloading additional responsibilities to manage new services including staff becoming legislative clerks of the court and administration of Part III offences previously managed by the province; and
2. directives in the provision of how court services are provided with respect to on-going use of video conferencing technology that impact staff time

These changes are in addition to the already existing backlog of work due to COVID-19. Like other municipally operated POA court services, Haldimand operates as lean as possible as this service does not generate extra revenue. Due to the new downloaded services, the County can no longer maintain compliance with Ministry requirements. The MOU stipulates that noncompliance to the agreement can result in financial penalties and Orders to Comply from the Attorney General against the County. Upon review of the downloaded responsibilities and for other reasons outlined in this report, staff are seeking approval for a new permanent full time POA Coordinator.

BACKGROUND:

In March 2001, Haldimand became responsible for the administration of the Provincial Offences Court as permitted under Bill 108, the Streamlining of Administration of the *Provincial Offences Act*, 1997 (*Act*). The Act provided the framework for the transfer of the Provincial Offences Administration (POA) responsibility from the Ministry of the Attorney General (MAG) to municipalities with the intent that the delivery of this public service for local justice matters could be best achieved with municipal partnerships.

The responsibility of the provision of POA services and funding is outlined within a Memorandum of Understanding (MOU) and Local Side Agreement (LSA). The MOU sets out the standards of the services to be provided and sanctions for failure to meet the standards – which could result in an unstipulated financial penalty in addition to an Order to Comply within a stipulated period.

The MOU also states that the Attorney General may “direct, with regard to changes in procedural guidelines; prosecutorial, court administration or court support processes; and changes to case management procedures and court master plans”. The MOU is silent in regards to any financial offsets that may be provided to the municipality as a result of changes to the provision of court services that may be incurred as a result of additional downloaded services.

Provision of POA Services:

The municipality, through its POA staff, is responsible for administering provincial offences that are committed under the *Highway Traffic Act*, the *Compulsory Automobile Act*, the *Trespass Property Act*, the *Liquor Licence Act*, and other provincial legislation, municipal by-laws and minor federal offences. Within the *Act*, there are defined severity of offences administered by POA that fall within Part I, Part II, or Part III. Currently, the role of the County with respect to each Part is different.

Part I – are minor offences of which an individual is given an Offence Notice (ticket) for such things as speeding, careless driving, and failing to surrender an insurance card. From the date of Infraction, a defendant has 15 days to select one of the three options below:

- Enter a plea of guilty and make a voluntary payment of the total payable fine. Payment can be made by mail, in person at any POA office in Ontario or on-line (www.paytickets.ca).
- Request Early Resolution (ER) whereby the defendant will meet with the municipal prosecutor to discuss time to pay the fine, request disclosure for the charge(s) or discuss the possibility of pleading to a lesser offence supported by the facts. If resolution with the prosecutor is reached, the defendant will be required to attend before a Justice of the Peace so the resolution can be endorsed. If ER is unsuccessful, a Notice of Trial will be provided and the matter will be set for

a future court date. If ER is requested and the defendant does not attend, the defendant is deemed not to have disputed the charge and is convicted of the offence in their absence as a Failure to Respond (FTR).

- Go to Trial and appear in court before a Justice of the Peace. If the defendant does not appear for the resulting trial, they may be convicted.
- If one of the three options is not selected within the 15 days, the defendant is deemed not to have disputed the charge and is convicted of the offence.

Within the MOU, Haldimand is currently responsible for providing all administration related to Part I matters including prosecution services. The County has a contract with Sullivan Mahoney LPP for the provision of this service (County contracted prosecutor).

Part II – are parking infractions whereby the defendant has the option to pay in person at the County Customer Service desk; or if a trial is requested to dispute the ticket, the County contracted prosecutor is utilized and a Notice of Trial will be provided with the matter set for a future court date. POA staff currently administer this process.

Part III are more serious offences such as failing to remain at the scene of an accident, stunt driving and driving while under suspension. It requires the defendant to appear in court before a Justice of the Peace. Failure to attend may result in a warrant for their arrest or the court may proceed in their absence. For Part III matters, the Province currently provides a Provincial prosecutor on behalf of the particular enforcement agency (i.e., Ministry of Transportation) and invoices the County for the prosecutorial services. For Part III matters that involve a Building Code or By-law infraction, the County contracted prosecutor is utilized. Going forward, the province has downloaded the prosecutorial responsibility for all Part III matters and the associated administration to the municipal POA partner.

The number of tickets varies from year to year and historically has driven the ebb and flows in the volumes of work. Table 1 provides statistics from 2015 including up to May 2022 and reflects tickets issued in Haldimand County from all sources including the OPP, By-law Enforcement, Ministry of Natural Resources, Ministry of the Environment, etc. but does not include Part II Parking issues offences. Note: From Jan-May of 2022 there were 1055 charges laid. 134 of those were Part III infractions.

Table 1: Haldimand County POA Ticket Issuance Statistics (Parts I and III)

Year	2015	2016	2017	2018	2019	2020	2021	2022
JANUARY	279	217	149	151	209	104	157*	142
FEBRUARY	201	205	184	186	330	81	169*	74
MARCH	273	248	364	213	283	84*	229*	173
APRIL	566	211	181	295	370	81*	371*	400
MAY	422	202	197	337	262	270*	372	266
JUNE	398	197	214	271	238	140*	160	
JULY	567	171	146	345	349	216*	269	
AUGUST	336	272	203	303	325	122*	131	
SEPTEMBER	238	173	117	184	298	190*	163	
OCTOBER	242	258	143	212	236	154*	139	
NOVEMBER	302	153	164	248	108	113*	122	
DECEMBER	200	102	127	276	71	160*	69	

**March 15, 2020 to April 2021 POA court was closed – tickets continued to be issued*

POA Court is scheduled weekly on Wednesday's and Friday's subject to discretion of the Local Administrative Justice of the Peace and availability of judicial resources coordinated by MAG. This does not include any trials of which multiple court days are required.

In addition to the POA court and trial dates, Justices of the Peace attend Intake Court each Monday to address the following services which has been provided at no cost to the County:

- Enable enforcement agencies and the public to appear before the Justice of the Peace for swearing of Information collected under Part III matters
- To enable the Justice of the Peace to hear and make decisions on any requests from defendants who are in need of additional time to pay their fines
- For any pre-trial requirements
- To hold FTR proceedings where the Justice of the Peace reviews the Part 1 Offence Notices of defendants who failed to exercise one of their available options and thereby convicted in their absence by the Justice of the Peace; and will then receive a Notice of Fine and Due Date in the mail as coordinated by POA staff.

The County retains the net amount of POA collected fines, fees, and surcharges after the remittance of fees to the Minister of Finance and payment of County contracted prosecutorial fees. As per the 2019 year end and 2020 POA audited Financial Statements, the chart below indicates the total revenue and expenses for 2018, 2019 and 2020. Collections of unpaid fines is a significant concern in the POA function and is addressed further below in the report.

	2018	2019	2020
Revenue	\$434,707	\$515,409	\$272,677
Expenses	\$389,463	\$456,703	\$315,207
Excess (Deficiency) of Revenue	\$45,244	\$58,706	\$(42,530)

From its inception, POA staff have been managed through the Clerk's Division and later within the Citizen and Legislative Services division as part of the corporate reorganization of 2018. Staffing adjustments have been made throughout the years based upon work volume while maintaining compliance to the MOU and LAS requirements. As POA does not generate any additional revenue, Haldimand POA staff levels have been operated as lean as possible. This is typical of most municipalities who administer provincial offences. The table below shows the changes in POA staff and prosecution services at key milestones since 2001, along with the proposed staffing. The chart is followed by an explanation of the changes throughout the years.

Table 2: POA Staffing Changes 2001-2022

Position	2001	2005	2008	2011	2021	2022 Proposed
POA Clerk	2	2	3	3	2	3
First Attendance Support from Other Divisional Staff	0	0	.25	.25	.25	0
In-House Prosecutor	n/a	0.5	0.5	0	0	0
Contracted Prosecutor	Yes	No	No	Yes	Yes	Yes
Total FTE's	2	2.5	3.75	3.25	2.25*	3*

**In 2021 and 2022 additional resources have been utilized and funded from COVID-19 funding, to manage the backlog created from COVID court closures between 2020 and 2022 and to address new administrative requirements associated with virtual hearings. The additional resources are temporary and are not reflected in the chart above.*

When POA services began in 2001, there were 2 full time employees with Part 1 matters prosecuted by Sullivan Mahoney. In 2005, a permanent part-time municipal Part I Prosecutor position was created to bring the prosecutorial needs related to POA court in-house versus outsourcing to Sullivan Mahoney as a cost savings measure. In 2006, as a result of shortage of Justices of the Peace and delays in bringing matters to court, a First Attendance system was established that anyone requesting a trial had to first meet with the County prosecutor in an attempt to find resolution without going to trial. Due to the additional administrative work to coordinate this, a non-POA staff member from the Clerk's Division was assigned to help out as well as to aid in collections activities. In 2008 a third POA position was approved due to increased volumes and to continue with the collection activities. In 2011 the Prosecutor position became vacant through a staff resignation and as a result of the decrease in prosecutor workload, Council approved outsourcing this service once again as it provided for a more cost-effective solution. The result was three full time permanent POA staff, one Clerks Division staff who assisted with First Attendance and the County contracted prosecutor services.

In 2012, MAG implemented Early Resolution (ER) which is still utilized and replaced the First Attendance System of which Haldimand was easily able to adopt. The process was a bit more defined whereby any defendant (regardless if going to trial) can meet with the County contracted prosecutor to discuss time to pay the fine, request disclosure for the charge(s) or discuss the possibility of pleading to a lesser offence supported by the facts. If resolution with the County contracted prosecutor is reached, the defendant attends court before a Justice of the Peace so the resolution can be endorsed if the proposed resolution is accepted by the Justice. The result has been positive in that court time for trials has been reduced since implementation – although additional staff time is required to administer the ER process. ER discussions occur on Wednesdays.

In the spring of 2021, as part of the Operating Budget, Council approved the reorganization of the Corporate & Social Services Department which saw the POA responsibility transfer to the Legal & Support Services Division (LSS) and the reduction of one permanent full time POA staff position which aligned with a staff retirement. The rationale for the reduction in staff was the gradual decline since 2013, in tickets that form the basis of work in POA, in addition to the intent to streamline the function for efficiencies. The reorganization also resulted in the loss of the other divisional staff support shown as 0.25 FTE in Table 2. Leading up to this decision, all information supported the reduction of POA staff at that time. Almost immediately following that decision, the environment saw some significant changes with respect to the main drivers outlined in this report that now require a 1.0 FTE to be re-introduced with a slightly different focus.

Current Environment

Since the reduction in a permanent full-time position in early 2021, there have been some significant unanticipated factors that have negatively impacted the ability to comply with the MOU and LAS. These factors are primarily due to MAG downloaded responsibilities and in how court services are now required to be provided. This is in addition to the backlog due to the yearlong court closure as a result of COVID-19. During the closure, MAG issued a directive that adjourned fine collections and license suspensions, although tickets continued to be issued. With tickets continuing to be issued, it meant more Early Resolution and court scheduling would be necessary once court reopened, adding to the existing workload and additional expectations from new processes.

At current staffing levels, POA is unable to comply with the objectives of the MOU and LAS in delivering adequate public service for local justice matters. This report is seeking the reinstatement of a permanent full time POA position with supporting rationale included in the Analysis section of the report.

ANALYSIS:

The *Provincial Offences Act*, 1997 (*Act*) is the legislative basis for the administration of provincial offences with associated supporting Acts and Regulations. Haldimand POA is responsible for the administration of the POA function as directed by its agreements with MAG which includes to the following requirements:

- Carrying out duties and obligations in accordance with the MOU, Act and all other relevant legislation and regulations
- Provide (at a minimum) the same services and level of service delivery that were provided by the Attorney General before the transfer
- Provide court, administration, court support, prosecutions, reporting and revenue-sharing
- Consult with the Attorney General and other parties with regards to changes in procedural guidelines, prosecutorial court administration, changes to case management procedures and court master plans, noting that any changes are subject to the approval of the judiciary
- Purchase sequentially numbered charge and service-related documents and other court related forms (i.e., ticket books)
- Collect and enforce fines

There have been several recent changes that have had to be accommodated within Haldimand POA administration. The key drivers of these change are:

- **Additional downloaded services from the Province;**
- **Changes to the way court services must be provided;**
- **Extraordinary backlog due to COVID-19 closures.**

While it is anticipated that it will take a number of years to address the backlog, the downloaded responsibilities and changes to court services is a permanent change; and at current staffing levels, Haldimand POA cannot meet the requirements it is obligated to meet.

Downloaded Responsibilities:

1. New Staff Responsibilities

Bill 177, the Stronger, Fairer Ontario Act (Budget Measures), 2017 and Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 introduced amendments to the *Provincial Offences Act* with the goal of modernizing and streamlining POA Court processes. Beginning of November 1, 2021, POA staff, defined legislatively as “clerks of the court” were downloaded with the following responsibilities that were formally the responsibility of Justices of the Peace.

a. Entering a Conviction and Imposing the Set Fines for Part 1 Notice of Offence (Tickets) or Quash the Notice of Offence:

Where the defendant has failed to respond (FTR) to the ticket - meaning that they have not selected one of three options available to them (pay, early resolution or trial) within the 15 days, the offence is deemed not to have been disputed, the clerk of the court is to:

- Review the ticket and determine if the ticket is defective or not, as defined in O. Reg. 472/21.
- If defective, the clerk of the court is to quash the ticket and complete a Record of Decision and Reason form, attach to the ticket and sign.
- If determined that the ticket is not defective, complete a Record of Decision and Reason form, attach to the ticket and sign thereby entering a conviction and imposing the set fines of the ticket.
- After a conviction is entered, the defendant has an additional 15 days after becoming aware of the conviction to make an application to strike the conviction for review by a Justice of the Peace.

Although this was a service previously provided at no cost to the County by a Justice of the Peace at Intake Court, it adds considerable responsibility, workload and risk to the County now that it is an expectation of County staff. Although the effective date of the downloaded responsibilities was November 1, 2021, there was some retroactivity applied as far back as 2020, adding to the additional workload created by this change.

Based upon statistics published by the Ontario Court of Justice for Haldimand POA, the annual average number of FTR's is 674 of which a conviction was determined, plus an additional 7 which were quashed (total of 681 total tickets to be reviewed). For each FTR, the review of the charges and associated administration takes 40 minutes. . The additional staff time associated with the downloaded clerk of the court duties equates to approximately 227 hours of additional work.

b. Application for Extensions of Time to Pay a Fine:

Clerks of the court are now responsible for reviewing applications made by defendants requesting an extension of time to pay the fine where the application is made in good faith and not for the purpose of evading payment. Although 'good faith' is not defined, the clerk of the court must consider the evidence presented by the defendant including information contained in the court file, and if the clerk of the court considers the defendant credible and trustworthy. This is very subjective and up to the discretion of the clerk of the court.

There has been a slow but steady rise in the number of submitted Applications for Extensions but it is anticipated that this will increase as matters that have been postponed due to COVID are now being scheduled. As this was previously a responsibility of the Justice of the Peace, statistics were not maintained and staff have only started tracking this information at the beginning of 2022. There has been a steady increase from January where 4 were reported (note – POA was closed for part of January due to COVID) to 13 in May. Based upon matters now coming forward since court reopening, this number is anticipated to grow exponentially.

It is estimated to take approximately 25 minutes of staff time to discuss each application with the defendant, review the evidence presented (noting it could include a single or multiple offences per application), develop a payment plan and the updating of ICON to reflect each offence. It is difficult to determine the staff level of effort that will be required, but it is anticipated that it will continue to increase as previously noted, adding approximately 70+ hours to the current staff complement.

In total, the above note, new Clerk of the Court responsibilities equates to approximately 300 hours annually.

2. Part III Offences

In March 2022, MAG provided notification of new legislation enabling the transfer of Part III prosecution matters to its municipal partners; meaning that the assigned provincial prosecutor, a chargeable service that Haldimand paid for, will no longer be provided and Haldimand POA is responsible for providing prosecutor services and associated administration. As at March 2022, four municipalities have already transitioned. MAG is anticipating and expecting that additional transfers of this responsibility will continue throughout 2022. While further investigation is needed to develop a strategy and fiscal impacts, there are efficiencies that can be found with utilizing the same County contracted prosecutor utilized for Part 1 matters that will aid in reducing the backlog of work.

- Part 1 and Part III matters would no longer need to be heard on separate days;
- This would provide for an additional half day for Early Resolution to occur;
- This will aid in coordinating officer attendance where their participation is required for several matters having different defendants
- Help alleviate backlog of Part III matters noting that many of the court cancellations or lack of judicial resources occurs on a Friday; and

- Potential of increasing County revenue as many of the Part III matters are provided with deals to help alleviate the backlog which has an impact on County revenue.

POA staff are responsible for scheduling Part III matters and this would still continue. Currently, the provincial prosecutor is responsible for coordinating discussions for ER's. This responsibility would now shift to the POA staff to coordinate – in the same manner as Part 1 ER's. This is a new responsibility not being done by the current staff compliment. .

In terms of actual volume of Part III matters, it is difficult to predict. Table 3 below outlines Part III charges for Haldimand POA from 2014 to 2020 as posted by the Ontario Court of Justice. The 2021 statistics have not yet been posted. The annual average of Part III charges for 2014 to 2020 is 275 with the provincial prosecutor allocating an average of 15 minutes per charge (subject to complexity, if a settlement is offered, etc.) The estimated administrative time required per charge is 60 minutes. Based upon an estimated 80% of the average number of charges requesting the ER process, the time required for administration would equate to approximately 220 hours.

Table 3: Part III Charges / Provincial Prosecutor Hours

Year	Part III Charges	Number of Provincial Prosecutor Chargeable Hours
2014	216	63.00
2015	378	60.50
2016	256	88.00
2017	149	64.75
2018	210	52.25
2019	205	58.50
2020	509	10.25

Since the execution of the MOU agreement in 2021, the provincial prosecutor rate for Part III matters has increased a total of 21%. Sullivan Mahoney, the contracted prosecutor for Part I matters has confirmed their interest in providing prosecution services for Part III matters. As the agreement for Part I matters with Sullivan Mahoney is set to expire in August 1, 2022, staff will be developing a scope of work to include Part III matters along with Part I matters for the upcoming negotiations. It is anticipated that there will be an increase in the costs for the Part III prosecution services estimated to be a minimum of \$6,300 based upon an annual average of 275 charges. This increased cost for prosecution services will run as a variance for 2022. A revised estimate based on the 2022 annualized costs will be brought forward to form an updated base budget, as part of the 2023 Operating Budget.

Changes to Court Services:

In March 2022, the Ontario Court of Justice issued a notice of POA Scheduling Guidelines (Guidelines) which provided instruction and direction for reopening court to the public to enable defendants / agents and court participants (Justice of the Peace, prosecutor, witnesses) to continue to appear remotely (via Zoom). Remote court options began as a direct result of the pandemic. Essentially this requires POA to provide a hybrid court system whereby defendants and court participants can attend in any combination of in person and on Zoom. Sometimes, it is not known how a defendant or participant is going to attend until minutes before the matter is heard.

The Guidelines state "POA courts administration must have their court administration counters open to the public as some defendants may not have the ability or technology to access online services." As a

result, in order to operate a hybrid court service and maintain a POA counter open to the public, three POA trained staff are necessary: one to act as court recorder, one to facilitate the virtual court technology and one to oversee the POA service counter. As there are only two POA staff, we are unable to comply, on a permanent basis, with this mandatory requirement. Prior to the provision of hybrid court services, for the most part, staff were able to accommodate with two POA staff – one being in court and one to service the counter. Since the new process, temporary, unbudgeted staff are being utilized on court days in order to comply with the stipulated Guidelines. These added requirements are not funded by the Province.

The number of court hours for Haldimand POA court has decreased over the past several years. The primary reason for this decrease is the introduction of the Early Resolution (ER) process in Haldimand County. ER is a process intended to address simple matters and eliminate the need for a trial/court time. The ER process still requires staff administrative time. A secondary reason for the reduction in court hours most recently is the continued shortage of Justices of the Peace which has resulted in a number of court days being cancelled. Several notices of court cancellation due to lack of Justice of the Peace resources have occurred since 2021. At some point in the future, some of the cancelled court time will need to be rescheduled adding to the existing backlog. POA staff schedule court dates, ER meetings, summons', etc. months in advance to defendants, prosecutors and OPP. Although it may appear that a lower number of court hours means less workload, in fact, court cancellation involves significant additional workload related to rescheduling, required notifications, etc. Continuous court cancellations coupled with the requirement to provide hybrid court services while maintaining an open service counter has increased workload extraordinarily, impacting the ability to comply with the MOU and supporting the need for an additional 730 staff hours, annually.

Pandemic Related Backlog:

1. Court Backlog

Like many other County provided services, POA was impacted by the COVID-19 pandemic. Per public health measures, the Ontario Court of Justice closed POA courts from March 15, 2020 to April 2021 and again for a brief time in 2022, which had a significant ripple effect.

- All matters were adjourned during this time – meaning that fine collections and license suspensions were halted; and defendants had no access to the judicial system; yet tickets continued to be issued, compounding the court backlog. This led to a substantial administrative backlog and an adverse impact on POA revenues.
- MAG instituted the use of Zoom court at the end of March 2021 which resulted in staff having to modify court processes to allow for all court attendees to participate via Zoom. This resulted in re-scheduling Justice of the Peace attendance with court dates, notification to all parties of the rescheduled dates (court dates and notifications of those dates are sent out several months in advance), providing phone support to those attending virtually, facilitation of the Zoom meeting while ensuring the integrity of the court processes and court recordings.
- In November 2021, MAG issued a “Resuming Court Operations” document with the goal of preparing to resume in-person appearances. This was an extensive review process that included review of safety protocols, review of HVAC ventilation monitoring and reporting, additional staff to address screening and monitoring, vaccination protocols, court protocols (documents and exhibits, movement of in-custody accused), etc.
- On May 6, 2022, Haldimand POA received clearance to proceed to in-person court attendance in addition to providing electronic attendance by Zoom.

Although the court was closed, tickets were still issued as demonstrated in Table 1: Haldimand County POA Ticket Issuance Statistics. This has resulted in a significant accumulation of defendants seeking to schedule ER meetings and trials – where court time is already limited; and there are tremendous

delays in the ability to appear before a Justice of the Peace in court. It has been confirmed with the Local Administrative Justice of the Peace that the backlog could, in fact, take years to be caught up completely, especially with the addition of Part III prosecutions now falling on the municipality.

2. Collection of Arrears Backlog

Historically an annual report has been submitted to Council in Committee to provide an overview of the current arrears and seek approval for write-offs in accordance with the Council approved policy, Provincial Offences Act Fine Collection & Write-Off Policy. This report has not been submitted to Council since 2019 due to the factors already outlined in the report, and the inability to address arrears efficiently with the current lack of resources. In 2019 staff report CLS-07-2019 Provincial Offences Act Fine Collection and Write-off Policy reported arrears as at the end of 2018 in the amount of \$7,634,577 with \$238,561.73 being written off, leaving a balance of \$7,396,015. These fines span from the initial downloading of POA in 2001 to 2019, and also include pre-2001 arrears balance that existed prior to the County administering POA.

Since the end of 2019, licence suspensions and collection notices for outstanding fines have (for the most part) not been processed. At the end of 2019 POA staff were preparing to move into the Haldimand County Administration Building. Subsequently, in 2020 the pandemic related disruptions and closures prevented collection notices and licence suspensions from being processed. Added responsibilities from MAG, and closures related to COVID throughout the pandemic further added to the growing backlog. Since then suspensions and collections have not resumed. This means the significant POA arrears that have historically been an issue have been left unaddressed.

The enforcement of POA fines rests solely with POA staff and is the only revenue to offset costs to provide the POA function required under the MOU. The need for improved and focussed collections efforts including the collection of fines, sending notice of unpaid fines, issuing suspension of driver's licences through the MTO (if applicable), coordinating efforts through a third-party collection agency and potentially seeking larger arrears amounts through Small Claims Court is very apparent. That said, it is anticipated that as collection works are initiated, POA staff will also see increases in Applications for Extensions of Time to Pay a Fine which are part of the downloaded clerk of the court duties and will in turn add extra time requirements to meet these needs.

A full time POA Coordinator would be responsible for the collections function including Council reporting on arrears and necessary write-offs based on County policy. A more focussed effort on collections, estimated at a minimum of one half day per week, will result in more revenue and assist in offsetting costs of the new position on a go-forward basis. It is important to note that any increased revenue from improved collection efforts has not been built into the business case presented in this report but if realized, will reduce the overall impact of the costs associated with the additional staff member.

Disclosure:

Another matter that Council should be aware of, however it does not form a recommendation through this report, is the recent concern related to the disclosure process.

Anyone charged with an offence is entitled to receive, free of charge, all the information in the prosecutor's possession or control that is relevant to the charge which could include investigating officer notes, witness statements, diagrams, and photographs. This information is obtained through a process called Request for Disclosure.

Additionally, Sullivan Mahoney, as the Part I prosecutor, makes requests directly to the Cayuga OPP Detachment for documentation (Disclosure Files) to prepare for scheduled ER's and court dates. Staff have recently become aware of concerns regarding Part 1 Disclosures from both the prosecutor and the OPP. The legal responsibility to provide the necessary documentation to the prosecutor in order to prosecute a file lies with the OPP and has, to date, been a very manual process. However the process

in which this is done is, to some degree, discretionary and there may be opportunity to create efficiency and streamline the process, but this relies on the cooperation of all parties. Lack of adequate disclosure can result in cases being remanded (to be heard on another court date) or dismissed entirely - which is not an effective use of court time, increases POA staff time to reschedule, adds to the County prosecution related expenses and most of all, potentially impacts the overall administration of justice.

Representatives of the OPP, Sullivan Mahoney and staff continue to work towards a solution. A potential solution may be to automate the process using existing software that is not currently being used to its fullest extent. Although there isn't a staff recommendation in this report related to the disclosure matter, due to its impact on the municipality, staff will continue to investigate options and may bring a request forward to the 2023 Operating Budget if a temporary position is deemed necessary to transition POA records to the new software and this new type of case administration.

Recommendation

The following chart provides a breakdown of the estimated number of hours required to meet the above new obligations not including backlog as related to COVID.

New Requirement Category	Estimated Number of Hours
New Court Processes	730
Part III Administration	220
Collections	200
Clerk of the Court Responsibilities	300
TOTAL	1450

A total full time employee (FTE) position equals 1820 hours, however these hours include eligible vacation, stat holidays and other unexpected absences. Therefore 1450 hours equates to approximately 1 FTE.

Overall, due to the substantial changes in court services requirements from the province, the downloading of another type of offense to municipalities and the significant backlog caused by the pandemic, including collection of unpaid fines, staff are recommending approval of 1.0 FTE's in the Legal and Support Services Division – Provincial Offences Administration for a POA Coordinator position. The position will work alongside, yet also provide leadership to the existing POA staff, working closely with the Supervisor of Risk Management & Legal Services, planning the work of the POA function with a strong emphasis on financial and technical expertise. If approved, this brings the FTE's for the POA function back to pre-pandemic levels to assist with managing the increased workload associated with the above noted changes, provide better oversight and improve collections efforts. It is imperative that this resource be implemented to allow the County to meet its legal obligations under the Memorandum of Understanding with the Ministry of the Attorney General.

FINANCIAL/LEGAL IMPLICATIONS:

Staff are recommending implementing an additional 1.0 FTE to the POA function to better manage additional requirements and meet the County's obligations to the Ministry of the Attorney General. Since the POA Coordinator position is new, the job evaluation process will be conducted to confirm the appropriate level of compensation for the duties and responsibilities involved. However it is estimated (for 2022) to fall into a Grade 8 on the CUPE salary schedule with an annual wage, benefits, pension and WSIB of \$80,490 as confirmed by Human Resources. If approved, the costs associated with the new position for the remainder of 2022 would be identified as a negative variance in the 2022 Tax-

Supported Operating Budget. Corporately, the overall surplus/deficit for the operating budget is funded from or contributed to the Contingency Reserve. Further, this position will be included as an ongoing Council-Approved Initiative in the 2023 Tax-Supported Operating Budget.

The downloading of Part III offences will require the municipality to pay for prosecutorial services. At this time, preliminary analysis has been completed by staff and the recommended approach is to expand our existing Part I prosecutor services to include prosecution of Part III offences. There appears to be efficiencies associated with this approach compared to considering in house prosecution services. Although it is difficult to predict the volume of Part III offences that will become the County's responsibility, staff are suggesting that Part III prosecution costs for 2022 be reported as a negative variance in the 2022 Tax-Supported Operating Budget. This will provide more time for staff to monitor and estimate costs for the 2023 fiscal year and present an appropriate increase to the prosecutorial budget through the regular operating budget process.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: Yes

Policy: No

REFERENCES:

1. [Provincial Offences Act, R.S.O. 1990, C. P.33](#)
2. [Ontario Court of Justice](#)

ATTACHMENTS:

1. Memorandum of Understanding and Local Side Agreement