

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

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DATE 24 September 1999

TO/DEST. Coordinator
 Corporate Services and Economic Development Committee

FROM/EXP. Acting Regional Solicitor

SUBJECT/OBJET ***PROVINCIAL OFFENCES ACT TRANSFER***

DEPARTMENTAL RECOMMENDATION

That the Corporate Services and Economic Development Committee recommend Council:

- 1. endorse the resolution attached as Appendix A;**
- 2. authorize staff to execute an Inter-Municipal Service Agreement with all area municipalities, in accordance with the terms set out in this report.**

BACKGROUND

On June 11, 1998, Bill 108, the *Streamlining of Administration of Provincial Offences Act, 1998* came into force. The *Act* was preceded by a lengthy consultation process and discussions between the various interested provincial ministries and municipalities forming part of the Provincial Offences Act Transfer Task Force, of which the Region was a member. This initiative was an element of the Provincial Government's "Who Does What" review and Local Services Realignment project.

In brief, this legislation provides for the transfer of the responsibility of the administration and prosecution of most provincial offences from the Ministry of the Attorney General to municipalities. In exchange for assuming these responsibilities, and to offset some of the new costs associated with the Local Services Realignment, the *Act* also permits the municipality to retain a significant portion of the provincial offences fine revenue collected, for municipal purposes.

Though the participating municipality will assume overall responsibility for the administration of the provincial offences court following the implementation of the transfer, the Province will retain some residual functions. Bill 108 stipulates that the Ministry of Attorney General will continue to set standards and to monitor the administration of justice to ensure fair and equal justice province-wide. As well, Ministry staff will continue to prosecute the more serious charges laid under Part III of the *Act*. The transfer will have no effect on the adjudication of provincial offences, meaning that the Province will continue to appoint Justices of the Peace, and will set their remuneration.

In addition to providing the administrative structure of the provincial offences courts, the participating municipality will assume responsibility for the prosecution of all Part I charges laid by police or provincial enforcement bodies. In fulfilling this role, the municipality will be required to furnish adequate facilities, staff and support to meet the standards for the administration of justice established by the Ministry of the Attorney General.

Though the assignment of *Provincial Offences Act* responsibilities to municipalities is made possible by legislation, the transfer itself is accomplished by way of agreements between the municipality and the Ministry of the Attorney General. The first of these is a standardized "Memorandum of Understanding" which sets out the obligations of the Ministry and the municipal partner and prescribes the service standards governing this new municipal function. Site-specific details of the transfer in each court area will be identified within a separate "Local Side Agreement".

The implementation of the transfer will take place following the submission of a letter of intent by the proposed municipal partner and provided by requisite criteria are met. Regional Council in January of 1997 authorized staff to submit a proposal to the Ministry of the Attorney General that would see the Region assume responsibility for this new function. In addition, a number of local municipalities, notably Nepean, Gloucester and Ottawa, had also indicated a willingness to participate.

DISCUSSION

Prior to receiving any formal submissions from either the Region or local municipalities, the Province announced that it would consider only one proposal from each court district, approved by each municipality in the affected area. Accordingly, an ad-hoc committee of representatives of the Region and the Cities of Nepean, Gloucester and Ottawa was formed to examine the available alternatives for the implementation of the transfer. In addition, the committee set about negotiating and drafting an inter-municipal service agreement in contemplation of making a submission to the Province. Following extensive discussions, and in consultation with those area municipalities not formally represented, the ad hoc committee has prepared an intermunicipal service agreement. The purpose of the agreement is to define how *Provincial Offences Act*

responsibilities, revenues and costs will be shared in Ottawa-Carleton once the transfer takes place. As part of the process in developing the agreement, the committee reviewed proposals from other parts of the province and focussed on a structure that would best serve the ratepayers in Ottawa-Carleton.

Main Features of the Proposed Agreement

a. Lead Municipality

Under the Agreement, the Region will assume responsibility for the administrative and prosecution functions transferred from the Ministry of the Attorney General pursuant to the Memorandum of Understanding and the Local Side Agreement. In accordance with these contracts, the Region will be obligated to provide adequate staff, facilities and other resources to carry out these new functions. The cost of providing this service will be borne by the Region.

b. Creation of a Provincial Offences Advisory Committee

The Agreement would establish a staff committee, to be known as the Provincial Offences Advisory Committee, made up of representatives of all municipalities in Ottawa-Carleton. The mandate of the Committee is to provide advice with regard to the administration of the provincial offences court program and prosecution services. It will also serve as a discussion forum for issues that may arise surrounding the implementation or ongoing operation of the Provincial Offences Courts and to pursue other initiatives that would streamline the delivery of *Provincial Offences Act* related services in Ottawa-Carleton. The committee will meet on a regular basis to ensure service needs are being met.

c. Consolidation of Prosecution

Pursuant to the Transfer Agreement, the Region will assume responsibility for the prosecution of all charges laid under Part 1 of the *Provincial Offences Act* in respect of violations of provincial statutes. As the Region will be required to maintain a complement of trained prosecutors to fulfill this responsibility, the Region has also agreed to provide prosecution services to interested municipalities for the enforcement of by-law charges laid under Parts I and II of the *Act*, at no charge to those municipalities. Municipalities will continue to be able to engage their own prosecutors either in respect of all of their prosecutions or with regard to any particular matter, though the cost of such prosecutions will be the responsibility of the municipality that so elects.

d. Fine Revenue Allocation

In order to provide equal benefit to all taxpayers in Ottawa-Carleton, the net revenue arising from the *POA* Transfer will be retained by the Region. The calculation of net revenue results from the subtraction from gross revenue of those amounts required by law to be remitted to other municipalities or to the Province. Under the *Provincial Offences Act* as amended by Bill 108, the Region must pay to the Minister of Finance the following amounts:

1. The Victim Fine Surcharge, being a (15%) fee that is added to every *Provincial Offences Act* fine imposed under Parts I and II of the Act and which is credited to the Province's Victim's Justice Fund account. The surcharge is not payable on parking infractions;
2. Other fine revenues that constitute money paid to the Province for a special purpose. For example, fines collected under the *Game and Fish Act* are reserved for wildlife preservation;
3. Costs incurred by the Attorney General for adjudication and prosecution, as well as for monitoring the Region's performance under, and compliance with, the Memorandum of Understanding.
4. Fines and fees imposed under the *Contraventions Act* (Canada).

The Region must also pay to local municipalities those fine revenues to which they are entitled under the *Act* and which arise from the enforcement of their respective by-laws (e.g. parking tickets) and from those provincial statutes whose enforcement is provided by individual municipalities (e.g. *Building Code Act*, *Fire Protection and Prevention Act*, etc.). In accordance with Bill 108, the transfer of *Provincial Offences Act* responsibilities will not alter this arrangement and the Region will continue to remit to local municipalities that fine revenue to which they are entitled by virtue of their enforcement activity.

e. Conflict of Interest Guidelines

Attached as part of the Inter-Municipal Service Agreement are conflict of interest guidelines mandated by the Province and applicable to all parties to the Agreement. The Ministry of the Attorney General deems these guidelines critical to protecting the integrity of the administration of justice, and has incorporated them into the Transfer Agreement as principles that must be permanently maintained. The guidelines apply to all elected officials whose municipalities are part of the municipal partnership, to all persons managing or performing administrative functions under the Transfer Agreement and to all persons managing or performing prosecutorial functions under the Transfer Agreement.

At the time of this report, all local municipalities, with the exception of the Cities of Ottawa and Kanata, have provided their endorsement of the attached resolution and draft agreement. However, until such time as there exists unanimity amongst all municipalities the implementation of the transfer in Ottawa-Carleton may be delayed. The result of such a delay is that funds earmarked for this court district for 1999 and subsequent years will not be released by the Province. Though the Ministry of Finance has remitted those net fine revenues applicable to the 1998 fiscal year, funds for subsequent years, along with those attributable to outstanding unpaid fines, will be withheld pending endorsement of the attached resolution by Ottawa and Kanata Council.

FINANCIAL IMPLICATIONS

Based upon current estimates of those costs associated with the administration and prosecution of *POA* charges and current charge volumes, it is anticipated that the transfer will generate approximately four million dollars of revenue per year.

CONCLUSIONS

The Corporate Services and Economic Development Committee's and Regional Council's endorsement of the attached *Provincial Offences Act* resolution will permit staff to commence the process of preparing for the implementation of the *Provincial Offences Act* transfer in Ottawa-Carleton. It should be noted, however, that this is conditional on the endorsement of the resolution by the Cities of Ottawa and Kanata. Until such time as this is done, the financial benefits available to the residents of Ottawa-Carleton arising from this initiative may not be realized.

This report is respectfully submitted.

Approved by
Eric A. Johnston,
Acting Regional Solicitor

EAJ/dgw

APPENDIX A

COUNCIL RESOLUTION NO.

WHEREAS the Regional Municipality of Ottawa-Carleton (the Region) has approved a resolution endorsing the preparation of a submission for the assumption by the Region of *Provincial Offences Act* responsibilities in the Ottawa-Carleton court area;

AND WHEREAS a joint committee made up of representatives of the area municipalities (the Serviced Municipalities) and the Region has been established in order to discuss and to review the alternative means by which the transfer of *Provincial Offences Act* responsibilities might best be effected in Ottawa-Carleton;

AND WHEREAS the committee has determined that the transfer of *Provincial Offences Act* responsibilities can be most effectively implemented at the Regional level;

AND WHEREAS the Region has made a proposal and demonstrated its commitment to enter into a Memorandum of Understanding (MOU) with the Attorney General of Ontario (the Attorney General) to assume justice responsibilities under the *Provincial Offences Act* (POA);

AND WHEREAS the Region approves of its selection to participate in the transfer of court administration and prosecution responsibilities in respect of the Provincial Offences as set out in the *Streamlining of Administration of Provincial Offences Act, 1998* (Bill 108) for the Ottawa-Carleton court service area;

AND WHEREAS the Region acknowledges and agrees that it will be responsible for the obligations set out in the Memorandum of Understanding, the schedules thereto, and the Local Side Agreement (LSA) and will be the agent for the Serviced Municipality for purposes of providing POA functions to municipalities within the court service area as set out in the agreement between the proposed Municipal Partner and the Attorney General; and

AND WHEREAS, the Region acknowledges that it will be responsible for the costs associated with providing *Provincial Offences Act* services in the court area, as set out in the Agreement between the Serviced Municipalities and the Region (the Inter-Municipal Agreement);

AND WHEREAS the Serviced Municipalities and the Region agree that net revenues collected by the Region will be allocated on the basis set out in the Inter-Municipal Agreement;

AND WHEREAS, the Serviced Municipalities and the Region agree that in the event of a dispute arising between them, the dispute resolution process as set out in the Inter-Municipal Agreement shall be followed;

NOW THEREFORE BE IT RESOLVED THAT:

1. The Serviced Municipalities and the Attorney General be advised that the Regional Municipality of Ottawa-Carleton approves of the responsibility, cost and revenue sharing arrangements and the local dispute resolution process for the *POA* transfer in accordance with the Inter-Municipal Agreement negotiated between the Region and the Serviced Municipalities.
2. The Regional Municipality of Ottawa-Carleton continue negotiations with the Attorney General to become the Municipal Partner for the transfer of responsibilities under the *POA*.