11
REVIEW OF COURT SERVICES & REQUEST FOR ADDITIONAL STAFFING

(Regional Council at its meeting on March 31, 2005, amended the recommendations contained in the following report to read as follows:

1. ***Approval be given for the immediate recruitment of six temporary staff and the Commissioner of Corporate Services report back to the Committee in June, 2005 on the case load, revenues, and potential need for further staff to be hired on a phased-in basis;***

2. ***A review of the Court Services Program be undertaken by an independent third party in consultation with the Ministry of the Attorney-General, cost-shared 50:50 between the Region and the area municipalities at the estimated Regional cost of $62,500, and the review be subject to a tender or RFP process;***

3. ***Staff report further to Regional Council pending the outcome of the independent third party review and that report to include a recommended new Inter-Municipal Agreement that would remove the tax burden of the Court Services Program from the tax levy of the Region and the area municipalities;***

4. ***A Steering Committee — which includes the York Region Chief Administrative Officer and any of the area municipality Chief Administrative Officers who choose to participate, be formed to oversee the review;***

5. ***The Regional Clerk forward a copy of this report to the area municipalities for information.)***

The Finance and Administration Committee recommends that:

1. Council Minute No. 18 (February 17, 2005) be received;

2. the presentation from Jim Davidson, Commissioner of Corporate Services, be received;

3. the recommendations contained in the following report, February 28, 2005, from the Commissioner of Corporate Services be adopted as amended as follows:

a) Recommendation 1 be deleted;

b) Recommendation 2 be deleted and replaced with the following:

" 2. Approval be given for the immediate recruitment of six temporary staff and the Commissioner of Corporate Services report back to the Committee in June, 2005 on the case load, revenues and potential need for further staff to be hired on a phased-in basis."; and

4. Recommendations 3, 4 and 5 be adopted.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council confirm the approved 2005 Business Plan and Budget for the Court Services Program and the revenues and payments to Area Municipalities contained therein.

2. Approval be given for the immediate recruitment of 11 temporary staff to maintain mandatory service levels and achieve the revenue projections put forward in the approved 2005 Business Plan and Budget as discussed in Recommendation 1.

3. The assessment of the efficiency and effectiveness of the Court Services Program be undertaken by an independent third party in consultation with the Ministry of the Attorney General, cost shared 50:50 between the Region and the Area Municipalities at a maximum Regional cost of $25,000.

4. Staff report further to Regional Council pending the outcome of the independent third party review and that report to include a recommended new Inter-municipal Agreement that would remove the tax burden of the Court Services Program from the Regional tax levy.

5. The Regional Clerk forward a copy of this report to the Area Municipalities for information.

2. PURPOSE

2.1 Financial Principles

To describe the unique financial arrangements in York Region and highlight its inherent weaknesses.

2.2 Independent Review

To provide background on the current delivery of Court Services in York Region and ensure that the terms of reference for the independent review are useful and appropriate.

2.3 Staffing

To provide a background for the staffing issues in Court Services and explain why the immediate recruitment of temporary staff is necessary.

3. BACKGROUND

On July 12th 1999, the Region of York and the nine Area Municipalities entered into a Transfer Agreement with the Province of Ontario and accepted responsibility for the Provincial Offences Court in Newmarket.

Under the terms of the transfer (MAG Transfer Agreement, Section 6.5), municipalities are permitted to retain the net fine revenue of the Provincial Offences Courts. The net income of the program may be divided between “serviced municipalities” in accordance with any local agreements. Under this arrangement, municipalities can ensure that the full costs of the court program are borne by convicted defendants and not by taxpayers.

The local Inter-municipal Agreement that was created by the municipalities in York Region at the time of transfer established a unique revenue sharing formula which ignores the net revenue and instead divides the gross revenues of the program between the ten municipalities. The gross revenue that is realised from *Highway Traffic Act* charges laid by York Regional Police is retained by the Region. The remaining gross revenue (less certain “dedicated fines” and other amounts required by statute to be paid elsewhere) is divided between the Area Municipalities in proportion to their respective annual levy.

Under this unique revenue sharing arrangement, there is no direct relationship between the net income realized by the program and the payments made to the Area Municipalities. York Region is the only area in Ontario where increases in Court Services program costs become a direct tax burden for residents.

On February 17, 2005 Council approved the 2005 Business Plan and Budget for Court Services. However, as an independent review of Court Services is under discussion, Finance and Administration Committee was directed to consider whether the recruitment of temporary staff should be delayed pending the outcome of the independent review.

4. ANALYSIS AND OPTIONS

4.1 Financial Principles

Due to the disconnect that exists in York Region between the actual income realized by the program and the payments made to the Area Municipalities, any increases in the operating costs of the program are not reflected in the payments to the Area Municipalities. Instead a tax burden is created for residents. York Region is the only area in Ontario where increases in Court Services program costs become a direct tax burden for residents.

Recent examples of unavoidable cost increases include:

- Mandatory 25% increase in hourly adjudication fees (effective January 2004)
- Mandatory 30% increase in Interpreter fees (effective October 2004)

In addition to these non-negotiable increases, there have also been costs associated with certain strategic decisions that have been made on a local basis. For example, on May 1, 2000, the Inter-municipal Joint Board of Management recommended that a second court facility should be opened in the south of the Region. This decision was confirmed by Finance and Administration Committee on May 18, 2000 and by Regional Council on May 25, 2000. It was recognized that the splitting of resources between two sites would bring many additional costs, but the need for localized customer service in the south of the Region was the prevailing imperative at that time. In due course, these additional costs naturally added further tax burden for residents.

4.2 Independent Review of Court Services Program

4.2.1 Previous Reviews

The Court Services program has been the subject of the following reviews:

March 2001 and June 2002 – Internal Audits by the Regional Director of Audit Services
July 2001 – External Audit by KPMG
June 2004 – External Audit by the Ministry of the Attorney General (MAG)

The recommendations of the internal audits and the KPMG external audit have been fully addressed, but the findings of the most recent audit (MAG) were only made available to the Region on February 23, 2005. This latest report makes reference to the staffing shortage and recommends that "the Regional Municipality of York should immediately review its staffing situation and should allocate additional resources to administrative functions for the POA courts in Newmarket and Richmond Hill".

Recent meetings of the ten CAOs have resulted in agreement that a further independent review of the Court Services program would be beneficial. The terms of reference for this review are currently being drafted.

4.2.2 Role of the Attorney General

Given that the program is required to follow not only the requirements of various statutes but also the specific directives of the Attorney General, it would be prudent to obtain consent and advice from the Attorney General before the terms of reference are finalized. This input would help to focus the review on those areas where the Attorney General is willing and able to accept recommendations from municipalities. It would also increase the value of the recommendations by making them more likely to be approved by the Attorney General and more capable of practical implementation. Finally, without the cooperation of the Attorney General's staff it would be impossible for the reviewers to obtain access to the Provincial computer system (ICON) or to the court files that are held in trust for the Ontario Court of Justice.

4.3 Staffing

4.3.1 Uncontrollable Activity Levels

Courts are required to process all charges filed by the various law enforcement agencies that lay charges under the *Provincial Offences Act* and the federal *Contraventions Act*. Court staff are not permitted to become involved in law enforcement activities and they cannot influence the number of charges laid. Strict legal requirements are found in various legislation including the *Provincial Offences Act, Courts of Justice Act*, the *Canadian Charter of Rights and Freedoms* and Common Law.

Throughout the Transfer Agreement, the Attorney General makes it clear that municipally-managed court offices must provide certain levels of service, regardless of the fact that many of these mandatory services are costly to deliver and some have no revenue component for the municipality. Having entered into a Transfer Agreement, municipalities are required to deliver <u>all</u> mandatory services and the Attorney General is empowered to conduct audits and reviews to ensure that services are being appropriately resourced and delivered.

4.3.2 Caseload Ratio

Due to the highly paper-based and labour intensive processes that are inherent in the business of court administration (pursuant to various statutes and judicial directives) the Ministry of the Attorney General (MAG) recommends that a fully trained and competent Court Administration Clerk can be expected to process between 5000 and 7000 charges per year. This “industry standard” has been adopted by most municipalities in Ontario and there is strong evidence to suggest that court offices that attempt to operate at higher charges-to-clerk ratios tend to experience backlogs that increase costs at the same time as reducing their fine revenues. The workload in York Region is currently 12,100 charges per clerk.

The natural development of law over time has brought additional burdens that were not envisioned in the original workload estimates. For example, the incidence of appeals, re-openings and Charter challenges has increased dramatically. Also, with the further refinement and development of prosecution disclosure rights, disclosure requests in York Region have increased by another 22% in 2004 (there were 3257 requests in 2004, 2664 in 2003 and 1,738 in 2002).

5. FINANCIAL IMPLICATIONS

5.1 Payments to Local Municipalities & Tax Levy Impacts

5.1.1 Original Inter-municipal Agreement

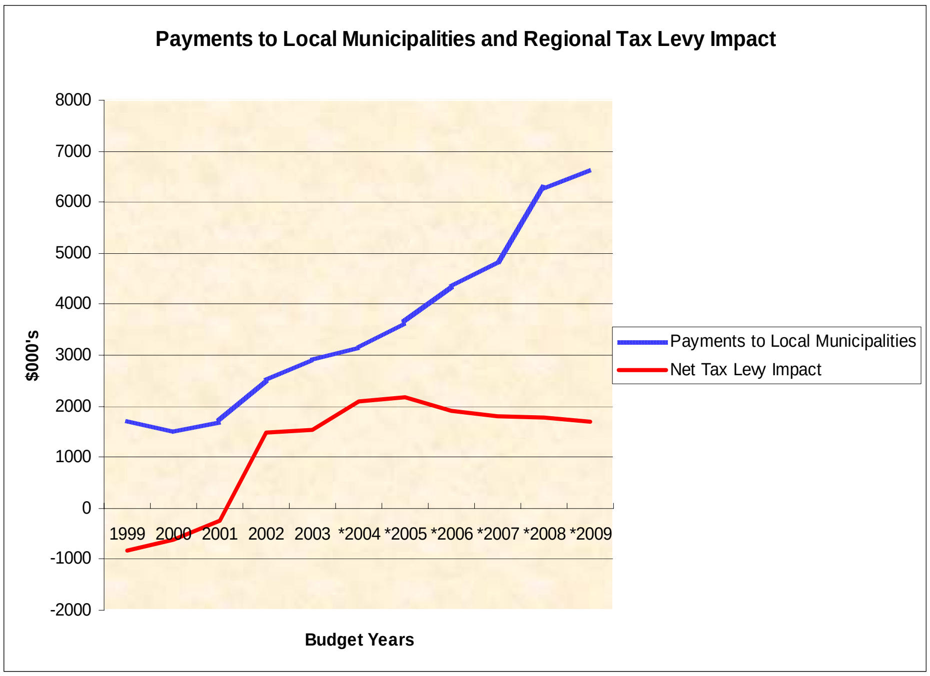
Under the original (1999) Inter-municipal Agreement, the local municipalities received revenue based on gross revenue of the Court program. Initially this was not an issue, as the Regional portion of the revenues covered all expenses. Due to the uncontrollable costs faced by the program, the regional revenue no longer covers the costs and there is now a tax levy cost to run the Court program effectively.

By using the existing formula for calculating payments to the Area Municipalities, the Court program would continue to be a burden to taxpayers.

Please note that the figures from 2005 to 2007 include projected staffing requirements.

Payments to Local Municipalities & Tax Levy Impacts ($000's)											
	1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006***	**2007***	**2008***	**2009***
Payments to Local Municipalities	$1730	$1504	$1695	$2530	$2929	$3170	$3628	$4354	$4837	$6268	$6637
Regional Net Tax Levy Impact	-$835	-$612	-$249	$1494	$1549	$2108	$2182	$1909	$1793	$1770	$1697

*** Projected payments**



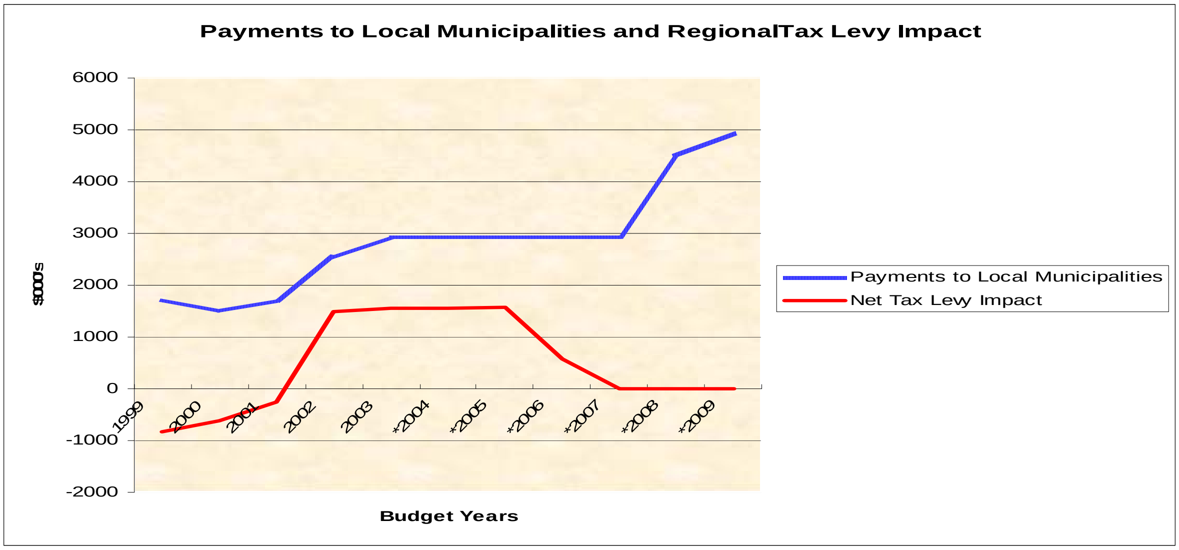
5.1.2 Flat-Lined Arrangement

On February 19, 2004 Regional Council adopted a flat-lined revenue sharing model. Under the revised principles for revenue sharing, the local municipalities will receive payments from the Region capped at the 2003 levels, until the tax levy impact reaches $0. This is budgeted to occur in 2007. At this point, it is proposed that the local municipalities would receive all additional revenues, net of expenses.

Please note that the figures from 2005 to 2007 include projected staffing requirements.

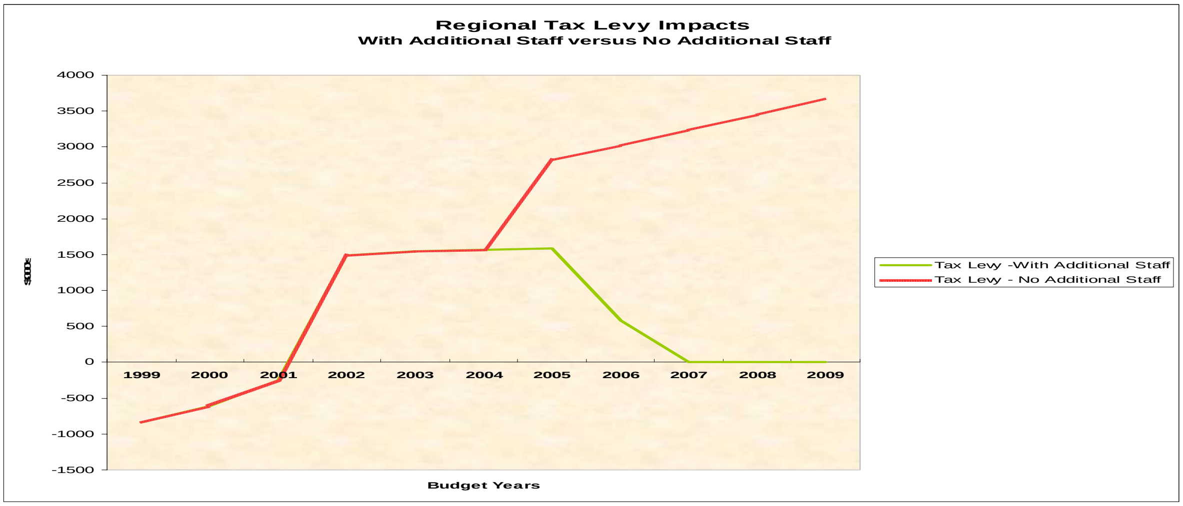
Payments to Local Municipalities & Tax Levy Impacts ($000's)											
	1999	2000	2001	2002	2003	2004	2005	2006*	2007*	2008*	2009*
Payments to Local Municipalities	$1730	$1504	$1695	$2530	$2929	$2929	$2929	$2929	$2944	$4498	$4941
Regional Net Tax Levy Impact	-$835	-$612	-$249	$1494	$1549	$1564	$1584	$585	$0	$0	$0

*** Projected payments**



5.2 Tax Levy Impact of Approving Additional Staff vs. Delaying Hiring

By delaying the hiring of the additional staff in 2005, the Court Service Branch would not be able to achieve the revenue projections that were approved in the 2005 budget and would result in Court Services exceeding their 2005 budget. As discussed in Section 4.3.1, the MAG audit references the staffing shortage of the Court Services Program and recommends that the Region immediately review its staffing situation and allocate additional resources to administrative functions for the POA courts. The graph below shows the tax levy impact with and with out the additional 11 staff and demonstrates that without the additional staff, a further tax burden will be created for residents of York Region. It is therefore recommended that the 11 new staff be hired immediately on a temporary basis pending the outcome of the independent review.



6. LOCAL MUNICIPAL IMPACT

By flat-lining the payments to the Area Municipalities at the 2003 levels and continuing with the collection initiatives detailed in the approved 2005 Business Plan and Budget, it is projected that the net income from the program will be sufficient to sustain the current level of payment to the Area Municipalities (without creating a tax burden) by 2007.

7. CONCLUSION

New arrangements for the governance and financial management of Court Services need to be devised as a matter of urgency.

The review of the efficiency and effectiveness of the Court Services Program should be undertaken by an independent third party. The Attorney General’s oversight of court administration and prosecution functions in Ontario should be fully respected and the terms of reference for the independent review should reflect this.

At the conclusion of the independent review it will be possible for staff to report further to Regional Council and make long term recommendations for the management of the program in the future. However, in order to achieve the Business Plan objectives that were approved by Regional Council on February 17, 2005 it is imperative that temporary staff be recruited immediately. This will generate revenue and avoid creating a further tax burden for residents. It will also address the concerns recently expressed in an audit of the program by the Ministry of the Attorney General.

The Senior Management Group has reviewed this report.