

Staff Report



To	Committee of the Whole
Service Area	Corporate Services
Date	Wednesday, May 15, 2024
Subject	Court Services: Transfer of Part III and Part IX Prosecutions under the <i>Provincial Offences Act</i> to the City of Guelph and implementation of Administrative Penalty System for Parking Infractions

Recommendation

1. That the Staff Report entitled "Court Services: Transfer of Part III and Part IX Prosecutions under the *Provincial Offences Act* to the City of Guelph and implementation of Administrative Penalty System for Parking Infractions", dated May 15, 2024, be received.
2. That Council authorize the Mayor and City Clerk, or their respective delegates, to execute the Interim Transfer Agreement with His Majesty The King In Right Of Ontario As Represented By The Attorney General, a side agreement with the Crown Attorney for Wellington County regarding prosecutorial intervention, and any other documents as may be necessary or desirable from time to time related to the transfer of prosecutions commenced under Parts III and IX of the *Provincial Offences Act* from the Ministry of the Attorney General to the City of Guelph, each in a form satisfactory to the City Solicitor.
3. That City staff be directed to proceed with the implementation of an Administrative Penalty System for parking infractions and directed to bring forward the necessary by-laws and policies required to implement and administer the Administrative Penalty System for Council's consideration.
4. That Council authorize the Deputy Chief Administrative Officer of Public Services and Deputy Chief Administrative Officer of Corporate Services, or their respective delegates, to execute agreements with His Majesty the King in Right of Ontario As Represented by the Minister of Transport as may be necessary to implement the APS, each in a form satisfactory to the City Solicitor.

Executive Summary

Purpose of Report

The purpose of this report is to seek Council's approval of the following service changes in Court Services:

- (1) The transfer of certain Part III and Part IX prosecutions under the *Provincial Offences Act* to the City of Guelph from the Province of Ontario; and
- (2) The implementation of an Administrative Penalty System (APS) to process parking infractions as an alternative to the provincial court process.

Key Findings

The City is responsible for the administration of the Provincial Offences Court for the Guelph court service area and the prosecution of charges laid under Part I and Part II of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (*POA*). The City also prosecutes certain Part III *POA* charges under municipal bylaws (such as parking infractions) and some provincial statutes. *POA* charges not currently prosecuted by the City are prosecuted by the Ministry of the Attorney General. The City receives fine revenue from all *POA* charges, including those prosecuted by the Province, and pays chargebacks to the Province for prosecutorial services.

The *Provincial Offences Act* was amended in 2017 to permit the Province to transfer prosecutorial responsibility for additional Part III and Part IX *POA* charges to municipalities. The Province has been working with individual municipalities to phase-in the transfer based on local readiness. During the phase-in, the Province refrained from increasing chargebacks to municipalities, which have not been increased since 2004 and do not provide cost-recovery for prosecutorial services provided by the Province. In absence of transfer agreements, the Province could increase the chargebacks to municipalities or impose the transfer by regulation.

The recommendations of this report should be considered against the backdrop of the overburdened court system and with an understanding of the impacts and constraints on other City initiatives. The court system continues to experience significant delays and case backlogs, worsened by the Covid-19 pandemic. In addition to impacts on the administration of justice, these delays constrain the City's objectives related to Red Light Camera (RLC), Automated Speed Enforcement (ASE), and compliance objectives of municipal bylaws such as parking. A significant number of tickets are being dismissed or penalties withdrawn due to excessive delay in the court system, which results in lost fine revenues, reduces the impact of fines as a deterrent to contravention/motivation for compliance, and encourages disrespect for the system.

There are synergies in coordinating the transfer of Part III and Part IX *POA* prosecutions and the implementation of an APS for parking. As an alternative to the provincial court system, municipalities have the power to establish Administrative Penalty Systems and to charge administrative penalties pursuant to section 102.1 of the *Municipal Act, 2001* and O. Reg. 333/07 made thereunder. Administrative Penalty Systems are a tool available to municipalities to alleviate some of the burden on the court system and improve efficiency in the processing of charges. The implementation of APS, coordinated with the managed and negotiated transfer of Part III and Part IX *POA* prosecutions, is a means to manage system demand and capacity, enhance procedural efficiency and processing times, and enable full realization of fine revenues. In addition, there is overlap in the staff resources required for these initiatives. Positions were approved under the 2022, 2023 and 2024 budgets, respectively, in anticipation of the Part III and Part IX *POA* transfer and in connection with the RLC and ASE programs. Once an APS for parking infractions is established, there is the possibility of expansion to APS for camera-based offences.

This report recommends that Council authorize the transfer responsibility of additional Part III and Part IX *POA* prosecutions to the City pursuant to an Interim Transfer Agreement with the Province and a side agreement with the local Crown Attorney. The effective date of the transfer will be mutually agreed between the City and the Province based on a coordinated implementation plan.

This report further recommends that Council direct staff to proceed with the implementation of an APS for parking infractions. Following receipt of direction, staff will proceed with an implementation plan for APS that will include: the development of the required bylaws, policies and procedures, recruitment and training of staff, software and system modifications, coordination with bylaw compliance and development of a communications plan. It is estimated that APS could be implemented by quarter 1 (Q1) 2025.

Strategic Plan Alignment

The transfer of Part III and Part IX *POA* prosecutions from the Province to the City is expected to enhance the administration of justice for the public and other stakeholders. Implementing the transfer under an Interim Transfer Agreement and a negotiated side agreement provides an opportunity for agreement with the Crown Attorney regarding prosecutorial intervention for serious charges.

The implementation of an APS, beginning with parking infractions, will alleviate some of the pressure on the overburdened and backlogged court system by diverting parking infractions to an administrative process. This is expected to have significant positive impacts on customer service and increase collection of fine revenue. APS is also expected to improve system and prosecutorial capacity for RLC and ASE charges in the court system. Once implemented for parking, APS could be expanded to include camera-based offences to further support the City's objectives under the RLC and ASE programs and Vision Zero.

Future Guelph Theme

Foundations

Future Guelph Objectives

Foundations: Provide excellent service

Financial Implications

There are staffing and financial implications associated with the transfer of additional *POA* prosecutions and implementation of APS. There are resource efficiencies in coordinating these initiatives. The cost of staff to manage increased prosecution workload arising from the transfer will exceed the Provincial chargebacks (at the current rates) for prosecutorial services. However, there is significant and unknown financial risk associated with the current chargebacks.

APS will also require staff resources; however, these staff resources also support the RLC and ASE programs and were approved in the 2022, 2023 and 2024 budgets, respectively. These staff resources and system improvements are fundamental to the full realization of corporate goals associated with RLC, ASE, and Vision Zero.

With respect to revenue, the City already receives fine revenue from *POA* charges, subject to certain exceptions. The transfer of additional Part III and Part IX *POA* matters will not generate new *POA* fine revenue.

An APS for parking infractions is projected to increase Court Services' net revenue by approximately \$245,000 per year based on current ticket volumes. For clarity, this projected revenue is net the staff and one-time implementation costs for APS. During the transition of parking infractions from the POA system to APS, there will be two active streams of revenue for parking. POA will still be scheduling older parking tickets while APS will be adjudicating newly laid cases. It is difficult to quantify the increase in parking revenue during this time, but long term projections indicate APS will have a significant positive impact on revenue from parking infractions.

Report

Part III and Part IX POA Prosecutions

To facilitate the transfer of Part III and Part IX POA prosecutions, the City would enter into an Interim Transfer Agreement with His Majesty The King In Right Of Ontario As Represented By The Attorney General ("Ministry"). This agreement is supplemental to the existing Memorandum of Understanding and Local Side Agreement (collectively the "Transfer Agreement") that governs POA matters currently prosecuted by the City. This is a standard contractual arrangement between the Ministry and all municipal partners. Each municipality will enter into an Interim Transfer Agreement for a two (2) year period (which can be extended by mutual agreement) on a staggered local basis until the Transfer Agreement can be amended, which will require consent and alignment of all municipal partners. To date, 17 of 35 municipalities have entered into agreements to implement the Part III and Part IX POA transfer.

Legal Services has reviewed the standard form Interim Transfer Agreement. The effective date of the transfer to the City of Guelph will be mutually agreed between the City and the Ministry based on a coordinated implementation plan.

Legal and Court Services are also recommending that the City enter into a side agreement with the Crown Attorney for Wellington County, pursuant to which the Crown Attorney will continue to prosecute all charges resulting in fatalities or bodily harm. The Crown Attorney maintains the right to intervene in any transferred prosecution. This side agreement is pursuant to that authority to intervene and will document the Crown's agreement with the City to intervene in these types of cases.

Administrative Penalty System for Parking

APS is an administrative system established by a municipality completely separate from the court system. Under an APS, penalty notices are issued by bylaw compliance officers and can be disputed by requesting a review by a municipally-employed Screening Officer. The Screening Officer would review and make a decision to affirm, cancel, reduce, or extend the penalty, in accordance with established policies, procedures, and standards of practice for Screening Officers. Should the ticket recipient disagree with the Screening Officer's decision, the matter is referred to an independent Council-appointed Hearing Officer (retained on a contractual basis at a per diem rate) who will make a final and binding decision.

Key benefits of APS for parking are anticipated to include:

- Improved customer service for citizens dealing with parking violations. APS is a more accessible and timely process. Matters can be resolved faster in person at the court office, online, or through other accessible service channels. Penalty

reviews would be scheduled within a few weeks compared to the many months or years through the court system.

- Higher processing rates and increased fine revenue. Enhanced efficiency will result in full processing of parking tickets. Parking tickets will not be withdrawn or penalties dismissed due to excessive court delays, resulting in increased fine recovery and higher offset of administrative processing costs. There is also less incentive to dispute a ticket when the dispute process is efficient and unlikely to result in withdrawal due to delay.
- Other system benefits and efficiencies. Process efficiencies include delivery of penalty notices by mail. Staff and bylaw compliance officer time will be utilized more efficiently as they will no longer need to prepare for and attend court as witnesses. Municipal prosecutors and provincial judicial resources are used more effectively by focusing on serious offenses instead of minor parking infractions. There will be greater continuity in penalty review outcomes, ensuring transparent and ethical processes and policies are adhered to.
- Proportionality of process for minor offences and procedural fairness. As a well-established program, there are few identified risks of an APS for the administration of parking penalties. The success of an APS is dependent on actual and perceived fairness, transparency, and accessibility of the process, which will be addressed in the bylaws, policies and procedures put in place.

Establishment of APS will require the passing of several bylaws, policies and procedures. A new bylaw will establish the APS and create the position of Screening Officer, Hearing Officer, and address certain governance matters. Municipal bylaw amendments will be required to designate certain offences as subject to APS and to establish administrative penalties. APS administrative fees will be added to the Fees and Charges By-law. In addition, O. Reg. 333/07 under the *Municipal Act, 2001* requires policies and procedures for proper and transparent oversight of the APS and to ensure the independence of the Screening and Hearing Review Officers. The requisite policies and procedures should include or address: guidelines for conflict of interest; financial management and reporting; procedures for public complaints; guidelines for extension of time for payment, time to request a review, and relief from undue hardship.

Coordinated Implementation

There are benefits and efficiencies in coordinating the transfer of Part III and Part IX POA prosecutions and the implementation of an APS for parking. Systemic efficiencies are described throughout this report and the shared staff resources are discussed in the financial implications section.

Legal and Court Services recommend the City take a phased approach to implementation of an APS, with Phase one being APS for parking infractions. Once established, the APS can be expanded to other offences, further reducing the demand for court capacity to address minor offences and reserving court capacity for more complex matters and those with serious and public safety implications. Phase two of the APS rollout could transition camera-based offences to APS, which

would support the Vision Zero plans, including enabling expansion of the RLC and ASE programs.¹

To effect the Part III and Part IX *POA* transfer, Legal and Court Services will work closely with the Ministry and the local Crown Attorney to put the requisite agreements in place and coordinate a successful transaction, as of a mutually agreed effective date. To implement APS, Legal and Court Services will work closely with Operations and bylaw compliance staff to ensure processes are reviewed and modified as necessary and that staff receive comprehensive training on the APS program as it relates to enforcement practices and procedures. Legal and Court Services will consult with Engineering and Transportation Services regarding staff resources and associated internal cost recoveries and revenue transfers. As with any program or service change, a public awareness and education campaign will be critical to the success of these initiatives. Legal and Court Services will work closely with Strategic Communications and Community Engagement.

Financial Implications

There are staffing and financial implications associated with the transfer of additional *POA* prosecutions and the implementation of APS. There are resource efficiencies in coordinating these initiatives. The required staff resources were approved in the 2022, 2023 and 2024 budgets, respectively, in anticipation of the transfer of Part III and Part IX *POA* prosecutions and in connection with the ASE program. The staff resources include: 1 full time Prosecutor, 1 full time Provincial Offences Court Clerk, 1 full time Legal Assistant, and 1 full time Screening Officer. In addition, APS would require the services of a Hearing Officer on an as-needed per diem basis, recoverable through administrative fees. These staff resources and associated system improvements are fundamental to the full realization of corporate goals associated with RLC, ASE and Vision Zero.

APS for parking is projected to increase Court Services' net revenue in the range of \$245,000 per year. The efficiency gains from APS are also expected to have a positive impact on *POA*, RLC, and ASE fine revenue.

Pursuant to Part X of the *POA*, the City receives fine revenue from both Part I and Part III charges under the *POA*, subject to certain exceptions. The transfer of additional Part III and Part IX *POA* matters will not generate new revenue. *POA* revenues continue to be negatively impacted by backlog from the Province's suspension of Court proceedings during the pandemic, as well as limited court days due to lack of judicial resources. APS is a tool to relieve some of the burden on the court system.

Court Services Operations will be responsible for implementation and administration of APS utilizing existing Courthouse facilities and incurring one-time implementation costs relating to software, process modifications, signage, training and public education, with no new budget requests. Court Services Operations will continue (as it has since the original transfer in 2000) to maintain the administrative functions for *POA* prosecutions. The Court Services' operational requirements associated with *POA* prosecutions are based on a non-tax supported budget.

¹ APS for camera-based offenses is governed by O. Reg. 355/22: Administrative Penalty Systems for Contraventions Detected Using Camera Systems made under the *Highway Traffic Act*, R.S.O. 1990, c. H.8. and would require additional privacy assessment, case management and operational resources, and internal policies and procedures.

Operational costs associated with RLC and ASE charges, whether under the current court system or APS, are subject internal cost recoveries and generate revenue transfers.

It should be noted that the City is party to an Inter-Municipal Servicing Agreement with The Corporation of the County of Wellington (the "County") and other serviced municipalities, pursuant to which the City operates the Provincial Offences Court on behalf of the serviced municipalities and remits net *POA* fine revenue in accordance with the distribution provisions of the agreement. As APS is separate from the *POA* system, APS operational expenses and revenues are not subject to the cost and revenue-sharing arrangements under the Inter-Municipal Servicing Agreement. Fine revenue from City of Guelph parking tickets is not subject to the Inter-Municipal Servicing Agreement, therefore, the transition to APS for parking will not impact the cost and revenue-sharing arrangement with the County under that agreement. ASE and RLC charges are currently administered through the *POA* court system. The transition of ASE and RLC into APS will have some budget realignment impacts to be considered during the 2025 budget confirmation update.

Consultations and Engagement

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Attachments

None.

Departmental Approval

None.

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