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**Subject:** Court Services – St. Catharines

**Report to:** The Joint Board of Management, Niagara Region Courts

**Report date:** Thursday, May 30, 2019

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## **Recommendations**

That staff **BE DIRECTED** to consolidate all Provincial Offences Court services in Niagara Region by closing the Provincial Offences Court Facility located at 71 King Street, St. Catharines upon expiry of existing lease (October 31, 2019).

## **Key Facts**

- Niagara Region's (the "Region") Court Services Division oversees the Provincial Offences Court on behalf of the Region and the 12 Local Area Municipalities (the "LAMs").
- On an annual basis, the net revenue from the Court is divided among all of the LAMs, each of which use the revenue to fund other municipal services at their discretion.
- In 2012, Council approved Corporate Services Committee Report 66-2012 to close the leased Courthouse in Niagara Falls and the courtroom in Fort Erie.
- The Court Services Division currently operates two Provincial Offences Court Facilities located at:
  - 445 East Main Street, Welland (new facility); and
  - 71 King Street, St. Catharines (leased since 2000)
- The new facility in Welland opened in 2017, with capacity for growth.
- The current term of the lease agreement for the St. Catharines facility will expire October 31, 2019 with no further extension rights.
- The Region pays the lessor in monthly instalments for the lease of the St. Catharines facility. In 2018, the lease cost the Region \$82,491 and in 2019, the cost from January to October 31, 2019 will be \$85,659.
- Starting October 1, 2018, the new Court Master Plan implemented by the Local Administrative Justice of Peace (the "LAJP") directed all matters to be scheduled at the Welland facility.
- Two Court Services Division employees are dedicated to the St. Catharines facility to operate the counter service, which includes assisting a defendant with setting a trial or early resolution meeting, extensions or re-openings, appeal documents and fine payments. Other than requesting a trial, none of these requests are required to be made in person. Fine payments can also be made over the phone, online, by mail, at any provincial offences courthouse in Ontario, and if the defendant's licence is suspended, the fine can be paid at any Service Ontario location.

- All information regarding a defendant's provincial offence matter can be accessed online.
- Greater operational efficiencies for the Court Services Division and cost savings would be realized by having all resources and employees in one location.

## Background

When the Region assumed responsibility for the administration of the Provincial Offences Court on January 29, 2001, court operations were administered from three permanent leased facilities. The facilities were located at 4635 Queen Street in Niagara Falls, 3 Cross Street in Welland, and 71 King Street in St. Catharines. In addition, there was a per diem licence agreement in place to use a court facility in Fort Erie when required.

The court facilities were not purpose built courthouses and did not meet the Ministry of the Attorney General ("MAG") or *Accessibility for Ontario with Disabilities Act* ("AODA") standards, and had physical/mechanical deficiencies as well as security concerns. On April 25, 2012, Council **APPROVED** CSD-66-2012, which recommended consolidating the three permanent leased facilities mentioned above into two courthouse facilities; one courthouse remained in St. Catharines and the other in Welland.

At the Council Meeting of July 2, 2015, Council **RECEIVED** Report CSD 53-2015 dated June 3, 2015 respecting the Provincial Offences Court - Courthouse Project Implications and **APPROVED** the following recommendations:

That staff **BE DIRECTED** to proceed with Option 1 (2+1 courtrooms) at 20 Duncan Street, Welland (now known as 445 Main Street) forthwith at an anticipated cost of \$12.4M (including land) and,

That Council **DEFER** any further decision with regard to a second facility at King and Carlisle, St. Catharines until after the Province determines whether an Administrative Monetary Penalty (AMPS) for Part 1 offences will be implemented.

The following year, Council was advised through Corporate Services Committee Report CSD 07-2016 at the January 27, 2016 meeting that MAG had decided not to proceed with the AMPS program. However, it has stated that it will proceed with a modernization initiative of the existing court system. In this regard Bill 177 passed by the Province on December 14, 2017 allows the Attorney General to enter into agreements with municipalities to transfer responsibility for certain prosecutions, namely Part 3 offences under the *Provincial Offences Act* that are currently prosecuted under MAG by Provincial prosecutors.

On October 23, 2017, the Court Services Division successfully moved into the Welland Courthouse at 445 Main Street. The project was substantially completed on time and

under budget, and once the project is closed, the excess capital levy funds will be returned to the Capital Variance Project and to the Court Services reserve.

The construction of the new Welland Courthouse has continued to increase operational efficiencies, allowing for improved and timely access to justice, including time to trial. Furthermore, the Welland courthouse is in complete compliance with MAG and AODA standards.

At the time the reports cited above were presented to Council, Court Services was experiencing a significant increase in the number of charges filed by the enforcement agencies. There was a concern regarding time to trial and 11(b) *Charter* challenges. Section 11(b) of the *Charter* guarantees an accused the right to a trial within a reasonable period; an unreasonable delay can result in an accused's charges being dismissed. Staff considered this pressing factor when it reviewed Council's recommendation for expanding and for multiple courthouse facilities. Court Services wanted to ensure there was enough court space and court time available for access to justice. However, since 2013, as outlined in more detail below, the charges laid by enforcement agencies have been consistently decreasing, and as a result, the time to trial achieved today no longer raises any 11(b) *Charter* concerns. In light of this and in staff's review of the relevant considerations including, customer service, access to justice, operational impacts and financial implications as outlined below, it is recommended that Court Services be consolidated into one facility at the Welland Courthouse.

## **Analysis**

Staff wanted to ensure that the recommendation to Council took into account a variety of considerations including, customer service, access to justice, best practices, financial and operational considerations.

### **Customer Service**

On October 1, 2018, a new Court Master Plan was implemented by the LAJP, directing all matters to be scheduled at the Welland Courthouse. As a result, the St. Catharines site is currently underutilized and the majority of the approximately 4,913 square foot leased space, made up of one courtroom, two intake rooms, three offices and the counter, is vacant.

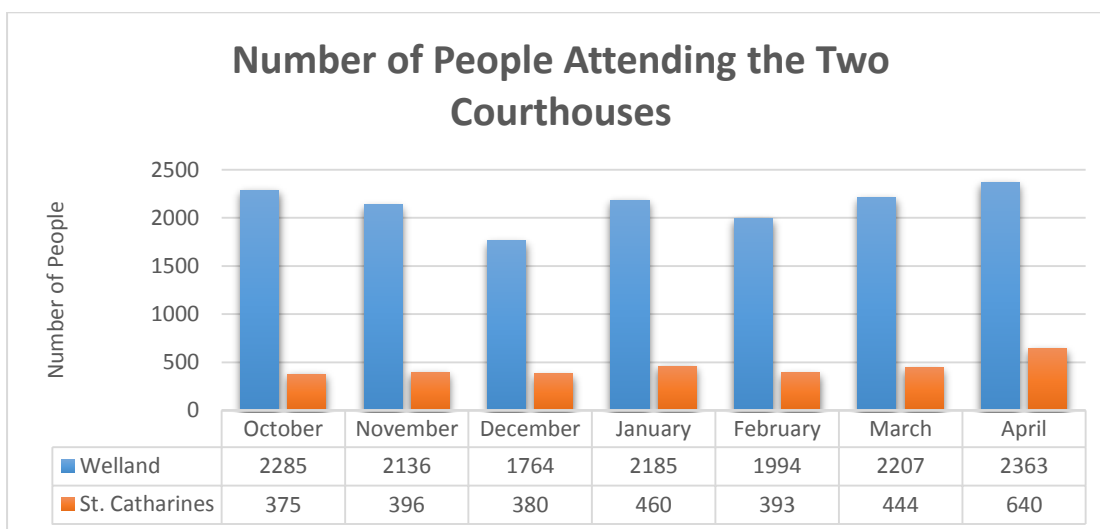
Two Court Services staff work at this location, utilizing only the counter to answer phones, set a trial or early resolution meeting, provide documents for an extension or re-opening, provide appeal documents, and accept defendants' fine payments. Other than requesting a trial, all of these services could be provided through other means, including email. For example, there are a variety of means other than attendance at the St. Catharines facility through which a defendant can pay their fine, including making

payments online, by phone, through the mail, at any provincial offences courthouse in Ontario (including at the Welland Courthouse) and if the defendant's licence is suspended, the fine can be paid at any Service Ontario location. Furthermore, the location provides limited onsite parking, for both employees and the public.

With regard to customer access, the Welland location is serviced by public transit and has ample parking. The Niagara Region Transit, Route 70 offers weekday services between St. Catharines and Welland Transit, which is located at 160 East Main Street, approximately 150 metres from the Welland Courthouse. There are two accessible Service Ontario locations in St. Catharines: 301 St. Paul Street, approximately 550 metres from the St. Catharines Courthouse and 350 Scott Street, approximately 3.9 kilometres from the St. Catharines Courthouse.

There would be improved service levels to the public as a result of the concentration of judicial and administrative services. In one location, there would be reduced confusion for defendants over which courthouse to attend. The proposed consolidation has been consistently supported by the primary stakeholders, including enforcement agencies and the Local Administrative Justice of the Peace in light of the fact they would also benefit from the resulting operational efficiencies.

As seen in the chart below, between October 1, 2018 and April 30, 2019, an average of 441 (17%) people per month utilized the counter service at the St. Catharines facility, compared to 2,133 (83%) people who utilized the Welland Courthouse. The Welland Courthouse has the capacity to service all customers from the St. Catharines facility.



Although there may be some impact to customers related to travel time with the closure of the St. Catharines facility, both a mitigation and communication strategy would be put in place to minimize any negative impacts.

### **Access to Justice**

An important consideration for consolidation is ensuring that access to justice is preserved. This requires Court Services to uphold a defendant's right to trial within a reasonable time.

Since the new Court Master Plan was implemented, the courtroom at the St. Catharines Courthouse is available for long trials or to manage the overflow of matters scheduled at the Welland Courthouse. However, it has remained unused for the past seven (7) months since the implementation of the new LAJP Court Master Plan. The change to the LAJP Court Master Plan has allowed Court Services to review the impact on court utilization (capacity) and charges based on the continuous trends since 2011.

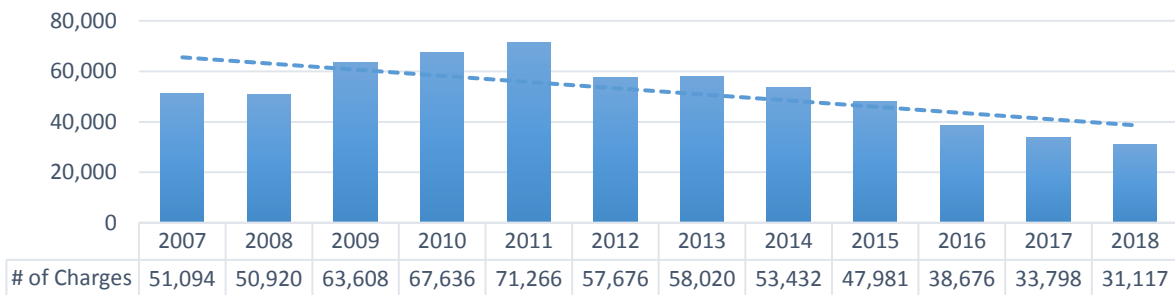
As outlined in the charts below Court Services is experiencing a consistent decrease in charges laid by enforcement agencies, allowing for additional capacity in all courtrooms in the Welland Courthouse, ensuring that trials are scheduled within a reasonable time.

Consideration of where a defendant resides is not a relevant factor when setting a matter for trial, as there is no right to be tried in one's own community for the purposes of a Provincial Offence charge.

### **Provincial Offences Charges Filed with the Court**

The chart below demonstrates that since 2011, Court Services has seen an overall decrease in charges laid by enforcement agencies. There was a decrease of 2,681, or 8% in the total charges laid between 2017 and 2018, which has also contributed to a decrease in courtroom utilization. This trend reinforces that the Region can accommodate the current charges in the Welland Courthouse, and it indicates that the Welland Courthouse has the capacity to absorb the potential download of Part 3 charges from the Province of Ontario pursuant to Bill 177 (for which the targeted implementation timeline was 2 years but the required agreements have not yet been finalized).

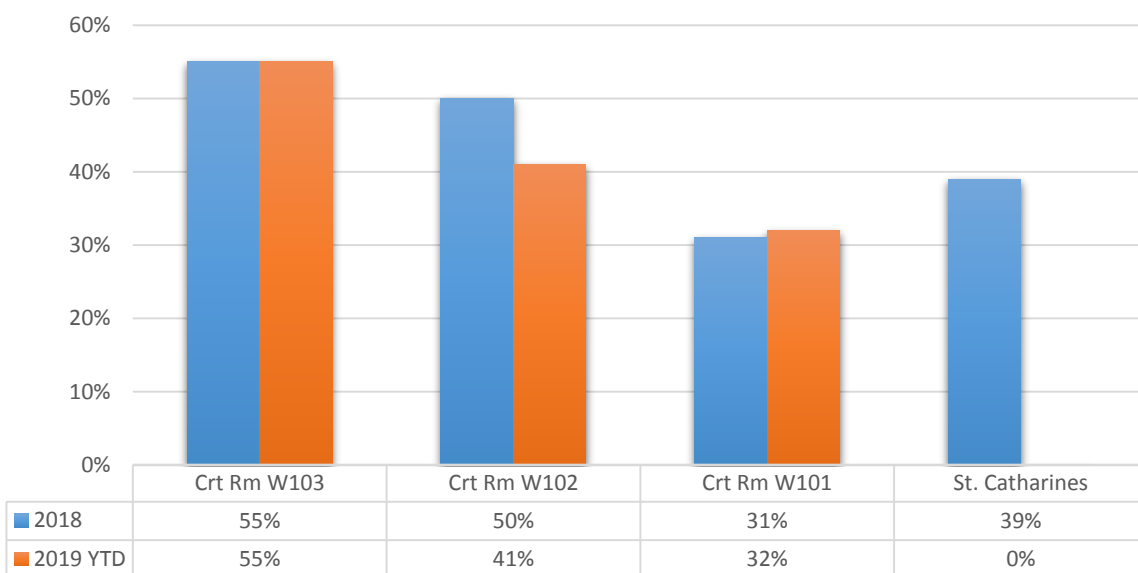
### Provincial Offence Charges Filed with the Court (2007 - 2018)



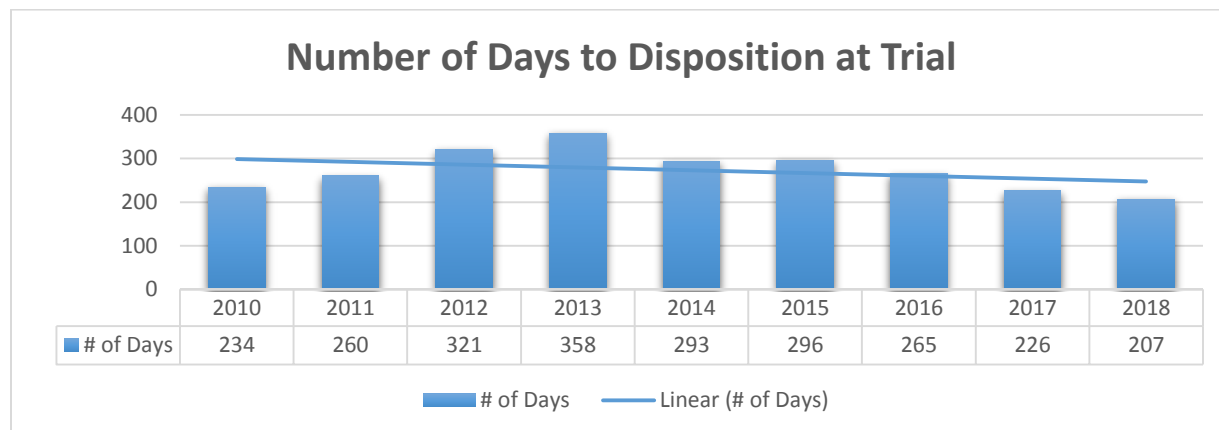
### Courtroom Utilization

The chart below outlines the total courtroom hours utilized at both the Welland Courthouse and the St. Catharines facility during 2018. It reveals that the Welland Courthouse had capacity to absorb the additional matters beginning in October, and it maintained capacity for the intake court and the two courtrooms for the remainder of the year. The trend of capacity for court utilization remains consistent leading into 2019. Therefore, if there were an increase in charges or a Part 3 download from the Province, the Welland Courthouse has the ability to accommodate and schedule these matters before the court in a timely manner.

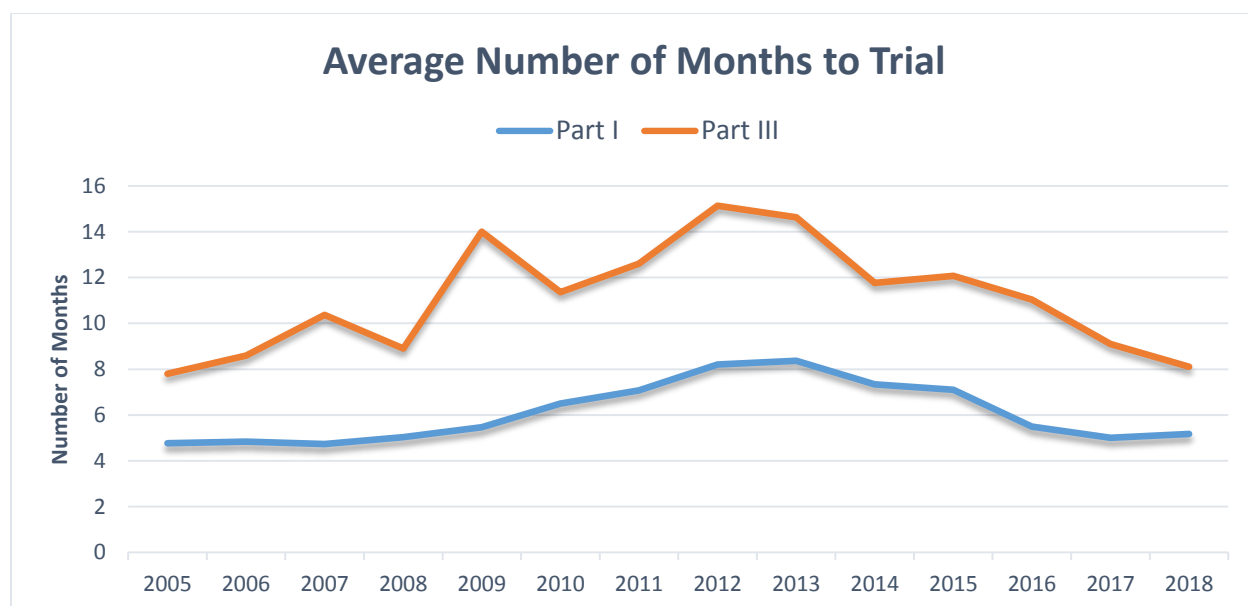
### Courtroom Utilization Rate



### Number of Days to Disposition at Trial



The chart above demonstrates that since 2015, time to trial has continually decreased. In addition, there has been an 8.4% decrease in time to trial since the opening of the new Welland Courthouse in 2017. This verifies Court Services' ability to provide timely access to justice to defendants in the Region, from a single facility.



When staff presented CSD 66-2012 time to trial was continually increasing, which raised the risk of an 11(b) *Charter* challenge. Generally speaking, case law suggests that there is a risk of an 11(b) *Charter* challenge for a Part 1 charge if it takes over 12 months to set a trial, and 18 months for a Part 3.

The chart demonstrates that the risk of an 11(b) *Charter* challenge has dissipated since 2015, as trials are continually heard in a timely manner. In 2018, time to trial for Part 1 matters was approximately 5 months and for Part 3 matters it was approximately 8 months. The time to trial trend shows a continuing decrease. This time to trial ensures public confidence in the justice system and allows citizens timely access to justice.

## **Regional Comparison**

The following regions in Ontario have consolidated to one centralized location to administer provincial offence matters:

- The provincial offences court in the Region of Waterloo<sup>1</sup> is located in Kitchener;
- The provincial offences court in the Region of Halton<sup>2</sup> is located in Burlington;
- The provincial offences court in the Regional Municipality of Durham<sup>3</sup> is located in Whitby; and
- The provincial offences court in the District Municipality of Muskoka<sup>4</sup> is located in Bracebridge.

## **Financial Considerations**

The total operating costs of the St. Catharines Courthouse for 2018 were \$97,022, which includes \$82,491 for lease costs and the balance for maintenance-related costs. The annualized costs for 2019 are expected to be higher, as the lease amount has increased 9% for the period of November 2018 to October 2019. At the current lease rate, the total operating cost for 2019 is anticipated to be \$85,659 for January to October. Any savings realized in the Court Services budget from allowing the lease to expire and ceasing operations in St. Catharines may provide opportunities to increase the overall net revenue and corresponding distributions shared equally between the Region and the LAMS.

It should be noted that the St. Catharines facility was included in the local side agreement with the Province at the time of transfer. The facility was not purpose built and is in need of infrastructure investments due to the minimal maintenance and improvements that have occurred over the years. These include upgrades to improve functionality and accessibility as required by MAG and AODA. The Region despite leasing the facility would pay the cost of any improvements. The facility does not meet MAG Standards for size and height requirements. If the Region completed any substantial renovations it would be required to meet MAG standards, which likely could not be achieved in the current facility.

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<sup>1</sup> Kitchener, Cambridge, and Waterloo.

<sup>2</sup> Burlington, Halton Hills, Milton and Oakville.

<sup>3</sup> Oshawa, Whitby, Ajax, Clarington, Pickering, Scugog, Uxbridge and Brock.

<sup>4</sup> Huntsville, Bracebridge, Gravenhurst, Muskoka Lakes, Lake of Bays and Georgian Bay.



With the consolidation of the Court Services operations into one courthouse, the uninitiated capital project for the building of a new courthouse in St. Catharines, approved in the 2011 capital budget, is recommended for closure. If Council chooses to pursue the building of a second facility in St. Catharines in the future, a new budget request can be submitted with a business case at that time.

### **Operational Impacts**

Closing the St. Catharines Courthouse would allow Court Services to fully consolidate into one Courthouse, which will increase internal operational efficiencies.

Further benefits would include:

- Improved service levels to the general public due to concentration of courtroom, judicial, prosecution and administrative services and reduction of duplication;
- Flexibility and improved employee coverage during unexpected workload issues and vacation or sick leaves, as the two employees dedicated to St. Catharines would be reallocated to the Welland Courthouse;
- More efficient work distribution and no requirement to fax/transport/duplicate court information;
- Reduced confusion for the general public regarding appropriate location;
- Multiple courtrooms, judicial officials, prosecutors and other resources in one location will permit “real time” transfer of cases from busy courts to less busy courts, facilitating the earlier resolution of all matters and maximizing court utilization;
- Potentially more streamlined organization structure for Court Services Division;
- Reduced duplication in equipment and resource needs. This includes items such as photocopiers, fax machines, IT servers and printers;
- Reduced fiscal costs of operating a leased facility;
- Reduced parking and travel (including courier) costs and time, as there is no need to travel between sites; and,
- Increased revenue distribution to the LAMs as a result of cost savings

### **Conclusion**

The lease at the St. Catharines Courthouse should be permitted to expire, and the Provincial Offence Courts in Niagara Region should be consolidated into one facility, being the Welland Courthouse.

### **Other Pertinent Reports**

JBM-C 3-2018 March 29, 2018  
CSD 53-2015 June 3, 2015  
CSD 07-2016 January 26, 2016

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