



STAFF REPORT ACTION REQUIRED

2008 Heads and Beds Levy on Institutions

Date:	May 16, 2008
To:	Executive Committee
From:	City Solicitor and Treasurer
Wards:	All
Reference Number:	P:\2008\Internal Services\Rev\ec08011rev (AFS#6860)

SUMMARY

This report requests authority to adopt by-laws to levy payment in lieu amounts for the 2008 taxation year for public hospitals, universities and colleges, and correctional facilities (the “institutions”), totalling approximately \$14.1 million (annual “heads and beds” levy), and responds to a previous Council request that the City Solicitor report on the applicability of recent federal court decisions on the “heads and beds” levy on institutions.

RECOMMENDATIONS

1. Council authorize the levy and collection of payment in lieu amounts for the 2008 taxation year on hospitals, colleges and universities and correctional facilities as authorized by Section 285 of the City of Toronto Act, 2006.
2. The maximum prescribed amount of \$75 be applied per provincially rated hospital bed, full time student, or resident place.
3. Authority be granted for the introduction of the necessary bills in Council to levy payment in lieu amounts for the 2008 taxation year on hospitals, colleges and universities and correctional facilities; and,
4. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

Revenue of approximately \$14.1 million will be raised through the 2008 levy on the institutions outlined in this report as outlined in Table 1, below.

Table 1: 2008 Payments in Lieu on Institutions

Institutions	Capacity Figures	Prescribed Amount	2008 Amount
Universities and Colleges	171,594	\$75	\$12,869,550
Public Hospitals	14,835	\$75	\$ 1,112,625
Correctional Facilities	1,752	\$75	\$ 131,400
Total	188,181		\$14,113,575

The revenue from 2008 levy on institutions has been budgeted for in the non-program payment in lieu (PIL) account. The 2008 levy amount of \$14,113,575 exceeds the amount budgeted for 2008 of \$13,956,150, as the 2008 budget estimate was based on the amount actually levied in 2007, and capacity figures have increased since that time. The budgeted revenue for the heads and beds levy on institutions of \$13,956,150 represents 16.9% of the total 2008 revenue budgeted for payments in lieu of \$82,536,500.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on September 26 and 27, 2007, City Council (Item EX11.13) adopted a report entitled “2007 Heads and Beds Levy on Institutions” (August 20, 2007) from the Treasurer, authorizing the levy on institutions for the 2007 taxation year, and amended the recommendation by adding:

“Council direct the City Solicitor to:

- a. review the recent Montreal Federal Court decision that would require Crown Corporations to have regard to property taxes in the payment of PILTS (payment in lieu of taxes) and consider its implications for provincial PILTS like the ‘Heads and Beds’ tax and report to the Executive Committee: and
- b. consider the feasibility of a Court challenge to Section 15 of Ontario Regulation 121/07 made under the City of Toronto Act, 2006, based on the Montreal Federal Court decision.”

ISSUE BACKGROUND

Section 285 of the *City of Toronto Act, 2006* provides the authority for the City of Toronto to pass by-laws to levy annual amounts payable on colleges and universities, hospitals and correctional institutions in an amount not to exceed the prescribed amount.

Section 15 of Ontario Regulation 121/07 made under the *City of Toronto Act*, 2006, prescribes a rate of \$75 for each full time student, provincially-rated bed or resident place respectively as determined by the owner Ministry of each facility.

COMMENTS

The by-law associated with this report provides for levies on institutions in Toronto for 2008. Based on the capacity figures for each eligible institution most recently provided by the Ministry of Municipal Affairs for 2008, the total levy on these facilities are:

Universities and Colleges	\$12,869,550
Public Hospitals	\$1,112,625
Correctional Facilities	<u>\$131,400</u>
Total	<u>\$14,113,575</u>

Attachment 1 provides payment in lieu amounts on institutions for years 1999 to 2008.

Implications of recent court decisions on Heads and Beds levy

In July 2007, the Federal Court released two decisions that addressed issues arising under the federal *Payments in lieu of Taxes Act* (PILT Act) and a regulation under that Act, the *Crown Corporation Payments Regulations* (CCPR). The decisions are *City of Montréal v. Montréal Port Authority* (MPA) and *City of Montréal v. Canadian Broadcasting Corporation* (CBC). The City Solicitor has reviewed them and concludes that they would be of little or no assistance in a court challenge to section 15 of Ontario Regulation 121/07.

These decisions pertain to federal PILTs legislation whereas the City's annual 'Heads and Beds' levy on institutions is pursuant to provincial law. The similarity between them is limited to the fact that the respective legislation governs payments in lieu of property taxes made by the two levels of government to municipalities. Further, the Montréal decisions involve PILTs paid by tenants of buildings held by federal Crown corporations. The 2008 'Heads and Beds' levy on institutions, on the other hand, is collected directly from provincially regulated entities that own and occupy their respective properties.

In the Montréal decisions, the City of Montréal sought judicial review of decisions made by two federal Crown Corporations, the MPA and CBC, to pay a PILT using an effective (i.e. "in-lieu" tax) rate that was lower than the rate applied by the City of Montréal. The rate applied by the City of Montréal was the same one that it applied to taxable commercial properties. However, the MPA and CBC calculated their PILTs using a lower effective rate arguing it had broad authority to do so under the CCPR. The Federal Court rejected the position taken by the MPA and CBC, concluding that when a Crown corporation makes a PILT, the corporation "is legally required to comply" with the CCPR and the formula in it for calculating payments. Consequently, the City of Montréal had applied the correct effective rate which was the commercial rate that would have applied to the MPA and CBC properties if they were taxable.

The legal significance of the Montréal decisions is that it requires federal entities that have agreed to pay PILTs, and are thus subject to the PILTs Act and its regulations, to calculate their payments using the assessed values of the properties as determined by the provincial assessing body and an effective (i.e. “in lieu” tax) rate as determined by the relevant municipality. In contrast, there is no dispute between the City and the various institutions that the annual levy applies to, of those institutions paying less than the prescribed rate.

The Montréal decisions have been appealed to the Federal Court of Appeal. A hearing date for the appeal is not yet scheduled. The City Solicitor is monitoring all developments related to the appeal for the Revenue Services Division. As noted, however, the Montréal decisions are not relevant or of any benefit to a court challenge to provincial PILTs like the ‘Heads and Beds’ levy on institutions. If the purpose of such a challenge is to increase the quantum of the prescribed rate for the levy, an alternate route may be for Council to direct the Chief Financial Officer to address the issue with appropriate staff from the provincial Ministry of Finance.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

Cam Weldon
Treasurer

ATTACHMENTS

Attachment 1: Payments in lieu on Institutions 1999-2008

Attachment 1

Payments in Lieu on Institutions 1999 - 2008

Year	Universities and Colleges		Hospitals		Correctional Facilities		Total	
	Capacity Figures	Amount (\$)	Capacity Figures	Amount (\$)	Capacity Figures	Amount (\$)	Capacity Figures	Amount (\$)
1999	114,262	8,569,650	13,922	1,044,150	2,012	150,900	130,196	9,764,700
2000	119,438	8,957,850	15,170	1,137,750	2,023	151,725	136,631	10,247,325
2001	119,869	8,990,175	14,614	1,096,050	2,028	152,100	136,511	10,238,325
2002	119,298	8,947,350	15,043	1,128,225	2,056	154,200	136,397	10,229,775
2003	133,382	10,003,650	15,043	1,128,225	1,887	141,525	150,312	11,273,400
2004	150,998	11,324,850	15,043	1,128,225	1,829	137,175	167,870	12,590,250
2005	161,163	12,087,225	14,930	1,119,750	1,706	127,950	177,799	13,334,925
2006	162,066	12,154,950	14,493	1,086,975	1,574	118,050	178,133	13,359,975
2007	169,497	12,712,275	14,835	1,112,625	1,750	131,250	186,082	13,956,150
2008	171,594	12,869,550	14,835	1,112,625	1,752	131,400	188,181	14,113,575