





Hamilton

INFORMATION REPORT

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	January 13, 2022
SUBJECT/REPORT NO:	Post Pandemic Virtual Trial Support (LS22003 / FCS22001) (City Wide)
WARD(S) AFFECTED:	City Wide
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COUNCIL DIRECTION

N/A

INFORMATION

A business case has been submitted as part of the 2022 budget process which identified the staffing need along with the ability to fund the costs through Provincial Offences Administration (POA) revenues. This need will arise as the court schedules are expanding for court re-opening and particularly due to the addition of complex and lengthy virtual court processes.

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**SUBJECT: Post Pandemic Virtual Trial Support (LS22003 / FCS22001)
(City Wide) – Page 2 of 6**

The City of Hamilton's POA office provides administrative support to the Ontario Court of Justice – Provincial Offences Court, judiciary, general public, enforcement agencies and legal professionals.

The POA office administers charges, conviction and enforcement for over 150 statutes. While the greatest volume of charges is under the *Highway Traffic Act* including, Automated Speed Enforcement and Red Light Camera, charges also follow enforcement under other legislation such as the *Compulsory Automobile Insurance Act*, the *Liquor Licence Act*, the *Occupational Health and Safety Act*, the *Environmental Protection Act*, as well as, applicable municipal by-laws.

The pandemic also has resulted in the Ministry of the Attorney General (MAG) directing that all provincial courts implement a digital pivot to support the introduction of enhanced virtual Early Resolution meetings and trials. Early Resolution refers to a designated court date created to allow a defendant and a prosecutor in a provincial offence case to meet and attempt to resolve the case. The re-opening of courts is a priority to restore public access and to continue effective enforcement of health, safety and other laws. MAG has required that all POAs demonstrate their ability to effectively and efficiently implement virtual trials in order to provide approval to slowly and in a controlled manner re-open provincial courts. Virtual trial and Early Resolution proceedings will be required going forward.

In order to successfully confirm Hamilton's preparedness for virtual trials and enhanced Early Resolution meetings, a dedicated staff team, in consultation with the Regional Senior Justice of the Peace, MAG and key stakeholders developed an accessible virtual court delivery platform and operating model. This newly established virtual approach was approved by MAG thereby allowing the introduction of enhanced Early Resolution meetings and virtual trials.

Since September, the City of Hamilton, in collaboration with MAG and identified stakeholders, initiated a controlled launch of virtual trials. Upon reviewing this new virtual court delivery platform, the need for additional resources to support the operating model was identified for both POA administration and POA Legal.

Currently, the City has seven full-time court reporters who support both the Early Resolution and trial process along with providing back-up to the Trial Co-ordinator and other administrative functions. In 2021, as of October 31, there have been 7,807 Early Resolution events. From January to December 2020, there were 6,866 Early Resolution events.

Early resolution, which is being conducted virtually over Zoom, requires two court reporters. One performs as a moderator who is responsible for opening and hosting the Zoom meeting, screening defendants to the court docket for each tier (four tiers in total),

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**SUBJECT: Post Pandemic Virtual Trial Support (LS22003 / FCS22001)
(City Wide) – Page 3 of 6**

renaming participants for the different tiers throughout the day and moving participants into various breakout rooms for meeting with counsel / prosecution / courtroom.

A second court reporter is required in the courtroom who is responsible for all courtroom procedures including the testing and operation of court-recording equipment (Liberty Court Recorder, Document Camera, Projector, Creston camera and audio controls, Zoom laptop), annotating and maintaining the court record, opening and closing of court, arraigning defendants on guilty pleas, prepping and endorsing court Informations, court orders and documents and providing assistance to the judiciary, prosecution and defence, as required.

During virtual trial proceedings, two court reporters are required to support the effective delivery of court services, specifically, one as a moderator performing the duties outlined above and one court reporter in the courtroom who is responsible for the court recording, opening and closing of court, arraigning defendants, swearing-in witnesses prepping and endorsing court Informations, orders and documents, logging and storing virtual court Exhibits and providing assistance to the judiciary, prosecution and defence, as required. With the current complement of seven court reporters, the City is constrained in supporting more than 1,300 outstanding virtual trials.

Supporting the virtual and in-person trial process, court reporters are required to have non-court days in order to effectively complete all in-court duties. Being scheduled out of court enables them to listen to the entire day's court proceedings to validate accurate, complete and verify their court endorsements, obtain signatures of Judiciary, as required, provide all endorsed court documents to the update desk in the court administration office to update into the Integrated Court Offences Network (ICON) which is an online system that allows staff to manage information on Ontario court cases.

Staff input information on individual cases and activities such as, court appearances, future court dates, convictions, fines, payment of fines and much more at local courts and generate statistical and other reports for planning and case management. Information is also updated into the Courts Administration Management System (CAMS) which manages municipal court activities related to *Provincial Offences Act* charges laid in Ontario. The system provides a valuable tool for managing the status of cases and provides a critical integration between the applications and collections processes. The system can produce all the relevant court forms in support of this and many other court administration activities. The updating must be completed within three days of the scheduled court date. Delays in the court reporter providing the endorsed documents to the update desk constrains the ability of administrative staff to adhere to the strict deadlines.

In 2022, the expansion of virtual trials will continue and an increase in availability of judicial resources is expected, thereby resulting in the need for two additional court

reporters that will provide support in the moderation and management of the virtual trial and Early Resolution processes both in-court and administratively. Supporting this expansion, there is a need to secure one additional administrative clerk to support the processing of court information from paper to electronic, as well as, support the management of increased court filings.

The hiring of these resources will be dependent on the expansion of the virtual trial and Early Resolution process. If the virtual expansion of court proceedings does not occur at the anticipated pace, the hiring of these positions will be delayed until such time as the need is identified. The reason for the budget request is predicated on the need to secure these resources within a time frame dictated by the expansion of scheduling additional virtual trials.

Similarly, experience with prosecutions during virtual court proceedings has determined a need for additional prosecution (POA Legal) staff to maintain service levels, respond to public and enforcement inquiries, prepare cases for court and to organize the handling and order of cases on court days needed to keep pace with the expanding virtual court schedules and maintenance of in-person courts involved in the re-opening process. “Virtual” court has resulted in more complex and substantially lengthier trial / hearing processes in the many Early Resolution, pretrial, trial, appeals and other court appearances.

Strict adherence to court start and end times is required. Efficient use of court time and the judicial and other resources involved requires added organization to limit delay and avoid negative impacts on the public who rely on courts, which include the victims of offences, citizen witnesses and accused persons seeking trials or hearings. The basis for adding three prosecutors and two prosecution assistants is further detailed below.

Virtual court proceedings change the nature and effort involved in organization and prosecution of cases by prosecutors, which demands will grow as schedules add more cases for court re-openings. With in-person trials, typically only one prosecutor will be assigned to each court and they are able to visually and verbally confirm the arrival of accused, defence agents, witnesses, enforcement officers and interpreters which is needed to determine which of several cases are ready to proceed. The prosecutor, prior to starting court or when not speaking in court, would normally have brief conversations with each person on arrival to determine readiness and approach required for each court appearance.

In the virtual court process, a prosecutor remains in the virtual proceedings or waiting queues and the need is for two other prosecutors assigned to case preparation before the virtual proceeding can start. The other cases on the docket will require prosecutors to manage the virtual process for persons involved in each case. Case management work involves needed discussions with persons such as confirming evidence that will be

given in court, explaining how to produce documents for the court in the virtual environment, plea discussions, determining case readiness, collecting critical information including from trial co-ordinators and setting the order of each matter while another prosecutor remains in virtual court.

MAG case scheduling directives are also suggesting adding multiple court tiers to each court day which will require this added assistance through the day. The organization of cases relying on virtual appearances is added but necessary work to re-open courts and maintain public service levels. Other out-of-court work for prosecutors and administrative staff also has to be maintained which includes charge and case reviews, preparation of court materials and argument, disclosure responses and related communications.

POA Legal offices currently have minimal administrative support and rely largely on paper files and records. Increasing charge volumes, Red Light Camera and Automated Speed Enforcement, in particular, have strained these resources which limits the ability to deal with the demands from virtual court. Re-opening with virtual courts substantially increases administrative demands. Additional prosecution assistants will support court preparation including digital documentation, relay of information on court access to the public and to address increased public and other inquiries due to the new virtual court process.

Without added prosecutor and administrative staffing assistance, the efficiency of courts and their capacity to approach pre-pandemic volumes in Early Resolution, trials and other court appearances will be constrained. The result being that prosecution staffing requires an increase of three prosecutors and two administrative assistants to be applied, as courts re-open under schedules determined by the judiciary and including virtual court proceedings.

With court operations being suspended for over a year and the introduction of additional provincial and municipal charges, there is a significant case volume that requires management in order to ensure cases can be heard within the required period. Without the above resources, the ability to effectively support the implementation of enhanced virtual Early Resolution and trials will be heavily constrained.

It is important to note that despite MAG providing direction for the introduction of virtual trials in-person trials will continue, when requested, in order to ensure those persons who may face the digital divide have seamless access to the courts and processes. To support in-person access to the courts, several months ago, MAG enhanced safety protocols and controls that have been implemented for Hamilton's POA location, specifically, surgical masks must be worn when entering the building and active screening is required prior to entry.

**SUBJECT: Post Pandemic Virtual Trial Support (LS22003 / FCS22001)
(City Wide) – Page 6 of 6**

The financial impact, of the identified eight FTEs, is summarized below and further expanded in the business case.

Adjusted Budget and Complement			
	Gross	Net	FTEs
Year One	604,900	-	8
Annually After Year One	802,804	-	8

The additional FTE cost will be funded by POA revenues collected.

APPENDICES AND SCHEDULES ATTACHED

None.

RS/CM/dt