




INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	March 22, 2023
SUBJECT/REPORT NO:	Proposed Transfer of Prosecution Duties for Part III and Part IX Provincial Offences from the Province to the City (LS23003) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ron Sabo (905) 546-2424 ext. 4520
SUBMITTED BY:	Lisa Shields, City Solicitor Legal and Risk Management Services
SIGNATURE:	

COUNCIL DIRECTION

Not Applicable.

INFORMATION

Executive Summary:

In 2017 the Province of Ontario amended the *Provincial Offences Act* (the POA) to allow a further transfer of prosecution duties under the POA to municipalities. The Province has reached out to a number of other municipalities to request that they enter into Transfer Agreements for the transfer of prosecution duties currently performed by Crown Attorney Offices under the POA which involve Part III and IX Provincial Offence matters. Hamilton is included in the request as it was one of approximately fifty municipalities that had previously accepted the transfer of other POA prosecution work. As a result, the City is currently in discussions with the Ministry of the Attorney General (MAG) and other municipalities around what the transfer will look like. Staff will report back at a future date with further information and recommendations.

Provincial Offences Act Charges:

Offences under a variety of Ontario laws are prosecuted under two main streams for issuing charges: (a) Part I charges issued by Certificates of Offence, and (b) Part III

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charges laid through an Information sworn by an enforcement officer before a Justice of the Peace and which results in a summons to the accused to attend court.

Charges under Part I are limited to penalties in the form of a fine. Part I fines are limited to a maximum of \$1,000 but typically result in fines upon conviction below \$500 for most offences. The City of Hamilton already prosecutes Part I offences for the Province, under a Transfer Agreement reached with the Province in 2000. Locally the Hamilton court administration and prosecution collectively deal with an average of 79,000 Part I charges annually.

The Province withheld prosecution of Part III offences and related activities under Part IX at the time of transfer to the City in 2000, which meant staff at Crown Attorneys' Offices with MAG are conducting these prosecutions. Part III offences are for more serious charges and where penalties can include jail or other court-imposed sanctions. Part III charges typically require multiple court appearances.

Locally, the annual volume of Part III charges dealt with an annual average of 4,600 Part III charges (this includes some charges already prosecuted by the municipality such as charges under the *Building Code Act*). Part IX of the POA is also sometimes used to obtain court orders under statutes which are related to prosecution work such as in animal control. The fines recovered for both Part I and Part III offences come to the City as revenue in the existing Transfer Agreement.

Current Transfer Activity in Other Municipalities:

The City is involved in discussions and analysis with other transfer municipalities and MAG staff. The City is also collecting data and information through staff of the local Crown Attorney's Office relevant to its own transfer proposal. Meetings with the Province commenced in 2018 but have been significantly delayed while provincial and municipal staff turned to pandemic-related work.

During that delay a small number of municipalities accepted the transfers, and more recently some transfers have involved larger cities who entered interim transfer agreements with the Province. Information related to these transfers in other municipalities will be discussed in future recommendation reports to Committee. The City remains in discussions with other municipalities including the majority of transfer sites around this new transfer proposal from the Province.

Historical Background:

In the year 2000, MAG and the City of Hamilton agreed to the Province transferring duties to the City for court administration functions for Parts I, II and III of the POA, and

prosecution functions for charges only under Parts I and II of the POA through an agreement. The administration and prosecution of these activities are currently carried on in City facilities at 50 Main Street East.

The transfer of duties in 2000 excluded prosecution of provincial offences under Part III of the POA and related activities under Part IX of the POA. These matters remained with Crown Attorney Offices. The Province became interested in transferring prosecution of Part III and related work to municipalities and amended the POA in 2017 as well as initiated discussions with municipalities who had accepted transfers in the past.

Conclusion:

A transfer of Part III prosecution duties to the City would involve the City entering into a further Transfer Agreement with the Province, and which will provide for a transition plan for transfer of records and responsibilities for prosecution work currently carried on through Crown Attorney Offices. The process of transfer would be similar to the process carried out by the City in 2000. Future reporting will provide recommendations for consideration by Committee.

APPENDICES AND SCHEDULES ATTACHED

None