

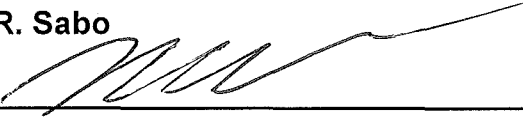


Hamilton

# INFORMATION REPORT

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> June 20, 2012	
<b>SUBJECT/REPORT NO:</b> Provincial Offences and Municipal Law Enforcement Workload Challenges (PED11122(b)/LS11007(b)/FCS11049(b)) (City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Roberto Rossini General Manager Finance and Corporate Services Department  Tim McCabe General Manager Planning and Economic Development Department  Ron Sabo Acting City Solicitor, Legal Services Div. City Manager's Office	<b>PREPARED BY:</b>  R. Sabo 905-546-2424 Ext. 4520 R. Caterini 905-546-2424 Ext. 5409 W. Young 905-546-2424 Ext. 2469 W. Mason 905-546-2424 Ext. 5718
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**Council Direction:**

On September 14, 2011 Council requested that an interim Report on staffing be presented to Committee by no later than June 2012 detailing POA revenues, possible net levy impacts, if any, cases vs. convictions, etc. in relation to the additional FTEs. For reference, the full detail of the approved Council item is below under Historical Background (see page 9).

**Information:**

**Net Levy Impact**

There was zero net levy impact in 2011 for staff in all departments. No use of reserves was required for the new staffing in 2011. There were a total of five FTEs approved for hire in 2011; those being two Prosecution Assistants for Legal Services Division, one administrative support position for Provincial Offences Administration, and two backend/administrative support positions for the Parking and By-law Services Division. The initial approved source of funding for these positions was through Provincial Offences Administration Program Revenues, which were sufficient in 2011 to avoid net levy impact or use of reserves. For 2012 the new positions were incorporated into the departmental budgets.

**Provincial Offences Administration Program Revenues**

POA actual revenues (does not include fine revenue disbursed to MLE and Traffic) is the source for funding of all 2011 new FTEs for the positions reporting to Legal Services and Provincial Offences. These revenues were above budgeted amounts by approximately \$200,000.00 in 2011. Table 1 immediately below is an update to Committee on the annual POA revenues (Actual) for 2011 and as compared to 2010. Year end information was not available for 2011 for the previous Report, as that Report was drafted in September, and based on data available up to June in 2011.

Table 1 - Actual POA Revenues for 2011 compared to 2010

2010	2011	%
\$6,595,298	\$6,705,411	1.67%

POA actual revenues in the first three months of 2012 have risen 23% as compared to the same period in 2011 as reflected in the Table 2 below. Growth is due in part to enforcement activity adding to charge numbers and court activity, which require municipal resources of the three affected departments (see further tables and discussion below).

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Table 2 - Actual POA Revenues first four months of 2012 compared to 2011

	2011	2012	Variance	%
January	\$ 459,101	\$ 593,087	\$ 133,986	29.18%
February	\$ 511,210	\$ 654,680	\$ 143,470	28.06%
March	\$ 599,990	\$ 691,215	\$ 91,225	15.20%
April	\$ 573,606	\$ 700,261	\$ 126,655	22.08%
<b>Total</b>	<b>\$ 2,143,907</b>	<b>\$ 2,639,243</b>	<b>\$ 495,336</b>	<b>23.10%</b>

### Charge Levels

Charges received from all enforcement agencies in 2011, since the drafting of the last report in mid-2011, had stabilized by year end such that annual charge numbers for 2010 and 2011 were virtually the same. Municipal Law Enforcement charge activity increased 26% (1227 charges in 2010 and 1545 charges in 2011) as compared to 2010. In early 2012, though only measured over 3 months compared to last year, there is again a growth trend. Growth is due primarily to police charge activity, as the mild winter of 2012 all but eliminated municipal snow related charges issued by Parking and By-law Services.

Table 3 - Total POA Charges Received from All Enforcement Agencies 2010 and 2011

2010	2011	%
88,020	88,575	0.63%

Table 4 - Total POA Charges Received from All Enforcement Agencies Comparing January to March 2011 and 2012

	2011	2012	Variance	%
January	5,542	7,067	1,525	27.52%
February	7,016	8,132	1,116	15.91%
March	8,370	8,070	-300	-3.58%
<b>Total</b>	<b>20,928</b>	<b>23,269</b>	<b>2,341</b>	<b>11.19%</b>

### Court Use

Court use only slightly rose in 2011 as compared to 2010 levels (Table 5). Court availability, which is decided by the judiciary, has an impact on courtroom use. Courtroom activities require POA Court Administration support particularly for court

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reporters, prosecution staff, and judicial resources which are supplied through the Province of Ontario. In the first quarter of 2012 there is increased court use as compared to the same period in 2011 (see Table 6). Court use in 2012 is up even before the new Early Resolution schedule, which will add two days of court usage per week starting June 5. This addition to the schedule will cause increased court usage for both 2012 and 2013.

The judiciary has stated a future willingness to consider the impact of Early Resolution and charge volume on the court schedule, after a reasonable period for assessment. The assessment by the court will not likely occur before the end of 2012 because of the mid-year start date of Early Resolution hearings. Any actual change in the court schedule will impact on the need for POA staffing whether for early resolution or trial use, primarily court reporter and prosecution staff. Judicial resources are limited and it is the judiciary which decide on any court schedule changes. Judicial decisions on court scheduling are a complex consideration involving courtrooms and Justice of the Peace numbers throughout the entire Central West Region of the Ontario Court of Justice. Staff will continue to communicate with the judiciary on charge and court activity, which has made Hamilton one of the larger POA court sites in Ontario. However, this activity is only one factor that the judiciary consider in allotting limited judicial resources to Criminal and POA courts. The City may after its own assessment wish to renew prior requests for judicial resources and ensuring any judicial vacancies are filled, but noting schedule changes will have impact on City finances and staffing.

Additional court usage information is provided by the number of court events heard in 2011/2012, and included in Tables 7 and 8 below. This is a measure of the number of matters of all types heard in Hamilton POA courts. This activity represents the use of the courts and in particular the workload of POA and legal staff in courtrooms. The activity requires attendance and interaction with members of the public as accused and witnesses, and enforcement officers. The events heard generate additional workload outside of court for municipal staff involved in court and enforcement matters.

Table 5 - POA Court Usage Comparing 2010 and 2011

2010	2011	%
1,952 hrs	1,999 hrs	2.41%

Table 6 - POA Court Usage Comparing January to March 2011 and 2012

2011 - Q1	2012 - Q1	%
507 hours	544 hours	7.30%

Table 7 - POA Total Court Events Heard Comparing 2010 and 2011\*

2010	2011	%
57,424	60,101	4.66%

Table 8 - POA Total Court Events Heard Comparing First Quarter 2011 to 2012\*

2011 - Q1	2012 - Q1	%
14,785	15,579	5.37%

\* ICON data in Tables 7 and 8 include events prosecuted by Ministry Prosecutors

### **Trial Requests**

Trial requests also stabilized by the end of 2011 with charge levels. Early 2012 trial request rates suggest continuing growth, which is expected for charge volume increases (see Tables 3 and 4 above).

Table 9 - POA Trial Requests Comparing 2010 and 2011

2010	2011	%
9,023	9,075	0.58%

Table 10 - POA Trial Requests Comparing First Quarter 2011 and 2012

2011 - Q1	2012 - Q1	%
2,178	2,496	14.60%

### **Conviction Rates**

Conviction in each case depends on the sufficiency of evidence presented through enforcement agencies and other witnesses. It is the Court which decides on conviction independently of any other person's views or the parties before them. The trial process ensures that persons accused are given full opportunity to present evidence on any defence or mitigating factors for sentencing. The high rates of conviction reported over 2008 - 2010 are an indication that enforcement agencies, again primarily charges from police agencies, collect sufficient evidence and consider defences where such information is available during investigation.

Prior calculation of conviction rates presented to Committee were based on a three-year total using 2008 - 2010 year end data. The staffing changes approved for workload issues occurred at the end of 2011, and a further two, additional, approved FTEs near the beginning of 2012 being a Municipal Prosecutor FTE in late February and a back-end/administrative support FTE for Parking and By-law Services. The only actual change in staffing for 2011 in prosecution staff, was the December 5, 2011 hiring of two prosecution assistants. This date was less than three weeks from the seasonal year end court closure. Year end data for 2011 would then not show any real impact from staffing changes, nor would the small amount of data in 2012 be comparable (See Use of Staffing on page 7 below for additional information on the use of new staff). At the time of writing most ICON data (as above) was limited to the end of March, 2012. ICON data also does not provide breakdowns between municipal work and provincial work in some of the categories used for these calculations.

Professional prosecution duties are focused on fairness and assessment of evidence to legal standards of proof. A conviction rate is not a standard used to measure prosecution work. Prosecution work is a factor in the outcome of trials, but duties for prosecutors include the requirement to withdraw charges where they are deficient or where it is appropriate.

It is suggested a better time to measure conviction rates and potential impacts will be after year end of 2012 and the end of 2013, as the latter year will include a full year of Early Resolution. Even then calculation of convictions rates may be impacted through other issues, such as court backlogs which have more to do with provincial resources than municipal activity.

### **Early Resolution**

Since the last report in September the newly proclaimed Early Resolution (ER) process has been a moving target both for its start date and scheduling.

The start date for Early Resolution changed from March 1 to March 31, 2012. Since March 31 all charges laid under Part 1 of the POA ("tickets" issued) have included the option of ER meetings. The later start date of ER pushed back the start of the required court hearings, from April to early June. POA Court Administration staff have had the extra duties of receiving requests and scheduling meetings with prosecutors and court hearings for ER. No hearings are scheduled in July or August based on the 2012 court schedule. As a result it is too early to assess public demand for Early Resolution meetings. Expectations are for more than double the number of First Attendance meetings, based on the elimination of both First Attendance and Walk-in-Guilty POA processes. Actual public demand may be much higher as all Part 1 charges provide for this option. Public demand is expected to build slowly in 2012 as the public learn about

and experience the new process. The Province continued to file new regulations up to May affecting how ER will be carried out and staff training.

Early Resolution scheduling faced much more uncertainty in early 2012. Staff in the POA Court Administration office were however recently advised that the schedule of two added court days per week would likely continue into 2013. The schedule may be added to based on future judicial re-assessment and decisions throughout the Central West Region. Up until clarification from the judiciary, City staff were concerned about the viability of Early Resolution beyond February 2013. Staff concern with the uncertainty of scheduling had suggested this Report would deal with the alternative of opting out of Early Resolution in 2013. This would be a consideration if public demand for the new services would not be accommodated in the court schedule.

### **Use of Staffing**

**Legal Services:** Two FTE Prosecution Assistants were hired in early December 2011. Initial duties were focused on training and help with large administrative backlogs. After a period of training there was further delegation of organizational duties and workload from prosecutors for efficiencies, all having impact on POA work and prosecutors ability to accommodate increasing charge volume and services levels. Prosecution work in early 2012 then started to allow for more time for backlogs of work, research of new laws, small additions to the court schedule, and increased charge reviews arising from municipal enforcement. The small schedule change involved shifting parking court time to POA use, which added to workloads for Legal Services prosecution staff. The addition of a FTE Municipal Prosecutor in late February 2012 followed a similar approach to training and addition of duties, and has assisted in court scheduling and increased court use. At the time of writing, Early Resolution scheduling will begin in June. The courts are normally booking trials from 3 to almost 9 months into the future. All prosecutors and the new prosecution assistants have had to devote time on training and development of the new Early Resolution processes in anticipation of the its legislated start in March and hearings in June. Early Resolution preparation and training had to be started early in 2012 and will continue into June when meetings with prosecutors begin.

**POA Administration:** The additional court administration clerk was hired in November of 2011. Training was minimal as the person in a temporary court administration position filled this new vacancy.

Court administration is experiencing high volumes of clients attending our front counter and contacting this office by phone. They are seeking assistance in selecting the appropriate option pursuant to receiving a certificate of offence at the roadside or a summons to appear in court. All four cash stations are open for public assistance whenever the staffing levels permit. POA is still experiencing high volumes of clients

with a wait period due primarily as a result of increasing number of charges filed. The longest wait times for assistance appear to occur in the first and last weeks of the month when defendants are making monthly payments. We continue to place priority on front counter and phone service and ensuring fine payments are processed within one business day of receipt in the mail. Training in relation to the new Early Resolution process has been ongoing since last Fall for all court administration staff. These staff need to fully understand the new process to provide accurate information and assistance to the public and to ensure the correct forms are used. Early Resolution will be a larger impact on workload for court administration staff than the First Attendance process was due to the expansion of eligibility to all part one offences.

#### Parking and By-law Services:

Parking and By-law Services: Council approved two FTEs (Court Administration Clerks). The purpose of these two positions is to provide adequate resources for the preparing of Crown briefs and to attend to administrative detail used to support actions in Court including the new Early Resolution process. The two Court Administration Clerks were not hired until late January/early February 2012 because it was necessary to first allow the Legal Services and City Clerks Divisions to first "staff up".

A critical role of the two Court Administration Clerks is to prepare proper Crown briefs which are provided to an accused as part of mandatory disclosure of evidence. The proper preparation of these Crown briefs can lead an accused to enter a guilty plea and pay an agreed-to fine amount because the evidence to support the prosecution is overwhelming. The result is more available Court time.

In addition to more Court time, another benefit realized from these two new positions is that the backlog of charges in the Municipal Law Enforcement (MLE) Section has been significantly reduced, and staff are now working with a 7-day turnaround in forwarding charges to Legal Services for prosecution.

MLE staff now meet with Legal Services staff on a regular basis to review case loads and review decisions made by the Courts. This has resulted in better bilateral communication between both divisions. Improved information flow and better evidence documentation allows Legal Services to now request higher fine amounts from the Courts to better serve as a general deterrent with the hopes that persons charged do not re-offend. Further, a cursory review of fine levels in the last 6 months has shown a substantial increase in fine amounts being levied by the Courts; in many cases increases as much 100+ percent.

Normally once a charge is laid it can take anywhere from 6 to 18 months for completion. Therefore, the benefits reported above are merely an interim report and may not be a true assessment over the longer term.



The 2012 City Budget projects zero net levy impact in 2012 for both Legal Services staff and Provincial Offences Court staff, and operating costs are to be funded through POA fine revenues. Parking and By-law Services staff in 2012 are to be funded through the Division's fine revenues, which will not be determined until the financial year end and which revenues depend both upon fines imposed in court and timing of payments, each of which can occur months after the enforcement activities of the Division.

**Historical Background:**

The full Council approved item is below. Parts (a) through (d) deal with staffing additions, parts (e) and (f) with funding, part (g) was subsequently referred to 2013 through additional Council approvals, and part (h) deals with the requirement for this report:

*Council, at its meeting of September 14, 2011, approved the following in respect of Report PED11122(a)/LS11007(a)/FCS11049(a);*

- “(a) That an additional 2.0 FTEs (2.0 Municipal Prosecution Assistants) be approved within the Legal Services Division of the city Managers' Office for immediate hire, and a further 1.0 FTE (1.0 Municipal Prosecutor) be approved for a start date at the beginning of January 2012;
- (b) That an additional 1.0 FTE (1.0 administrative support) be approved for Provincial Offences Administration within the City Clerk's Division of the Corporate Services Department, for immediate hire;
- (c) That an additional 1.0 FTE be approved for back-end/administrative support to by-law enforcement in the Parking and By-law Services Division of the Planning and Economic Development Department for immediate hire, subject to the approval of recommendations (a) and (b);
- (d) That an additional 1.0 FTE be approved for back-end/administrative support to by-law enforcement in the Parking and By-law Services Division of the Planning and Economic Development Department for a start date of January 2012, subject to the approval of recommendations (a) and (b);
- (e) That the required Parking and By-law Services Division positions noted in recommendations (c) and (d) above be temporarily funded, firstly from Provincial Offences Administration Program Revenues in excess of 2011 budget, and any additional costs be temporarily funded from the Tax Stabilization Reserve, and future costs to be funded through fine revenues for the Division with no impact to the net levy, subject to approval of the 2012 budget;

- (f) That the Legal Services and City Clerk's Divisions' positions in recommendations (a) and (b) be temporarily funded, firstly from Provincial Offences Administration Program Revenues in excess of 2011 budget, any any additional costs be temporarily funded from the Tax Stabilization Reserve, and future costs to be funded through Provincial Offences Administration Program Revenues with no impact to the net levy;
- (g) That consideration of an additional 2.0 FTEs (1.0 Court Report in City Clerk's and 1.0 Municipal Prosecutor in Legal Services) respectively within the Corporate Services Department and City Manager's Office, be referred to the 2012 budget process;
- (h) That staff be directed to present and interim report to the General Issues Committee by no later than June 2012, detailing POA revenues, possible net levy impacts, if any, cases vs convictions, etc. in relation to the additional FTEs referenced in sub-sections (a), (b), (c) and (d)."