



City of  
**Peterborough**

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**To:** Members of the General Committee

**From:** Patricia Lester, Commissioner of Corporate and Legislative Services

**Meeting Date:** June 25, 2018

**Subject:** Report CLSPOA18-001  
Downloading of Prosecution of Part III Offences to Municipalities

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## Purpose

A report to inform Council of the implications of the **Stronger, Fairer Ontario Act, 2017** regarding the downloading of responsibility for prosecuting Part III offences under the **Provincial Offences Act** ("POA") from the Province.

## Recommendations

That Council approve the recommendations outlined in Report CLSPOA18-001 dated June 25, 2018, of the Commissioner of Corporate and Legislative Services, as follows:

- a) That Council approve the addition of a .5 FTE Municipal Prosecutor to meet the increased responsibility of the downloading of Part III offences under the **Provincial Offences Act** and funding for the position be included in the 2019 and subsequent years budgets.
- b) That the Mayor and Clerk be authorized to do all such acts and things and to execute and deliver all such documents as in their opinion may be necessary or desirable to formalize the downloading of Part III offences from the Province.

## **Budget and Financial Implications**

Presently, all POA prosecutions for Part I and Part II are undertaken by 1.5 FTE's (Full Time Equivalent). As a result of the increased number of Part III prosecutions, an additional .5 FTE is required, resulting in 2.0 FTE Municipal Prosecutor positions.

As Staff is not aware of when the actual download will occur, approval of Recommendation (a) will provide Staff the approval now for the .5 FTE and the funds will be included in the 2019 budget. The impact in 2019 will be \$55,698. salary including benefits. This cost is shared with the County of Peterborough.

However, because payments to the Ministry of the Attorney General ("MAG") for a Provincial Prosecutor will cease upon downloading, a savings of approximately \$16,000. will offset the additional cost.

## **Background**

### **Downloading 2000**

In 2000 the City, on behalf of the County of Peterborough and City of Peterborough, became the Court Services Operator for offences committed under the POA. This arrangement was formalized in an Inter-Municipal Service Agreement between the parties and was a requirement of the Attorney General to the execution of a Memorandum of Understanding ("MOU") between the City as the Municipal Partner and the Attorney General.

The MOU authorized the City to perform all court administration and court support functions under the POA and prosecutions of matters commenced under Parts I and II of the POA. The prosecution of Part III offences remained the Province's responsibility.

In addition the City executed a Local Side Agreement with the Attorney General that reflected certain terms and conditions that were specific to a Court Service Area, one of the terms being that the expenditures for Part III prosecutions incurred by MAG were to be paid by the City.

The City is contractually obligated to provide all facilities, services and amenities within provincial policy and a legislated framework including on-going audit requirements. The cost of providing this service is paid out of the gross fine revenues from POA charges. The sharing of revenues between the City and County is based upon a weighted assessment formula.

Part III offences are currently prosecuted by the Attorney General's Criminal Law Division and are more serious offences that must be brought before a justice for resolution.

Part III offences cannot be resolved through the payment of a set fine and are offences that demand higher penalties (e.g. offences under the **Environmental Protection Act** that carry potential fines of up to \$50,000 on a first conviction).

Certain Part III offences authorize the issuance of arrest warrants and certain sentencing powers, such as probation orders or imprisonment.

### **Bill 177 - Stronger, Fairer Ontario Act, 2017 (the “Act”)**

Schedule 35 of the Act which received Royal Assent in December 2017, makes amendments to the POA, one being that Municipal Prosecutors will be mandated to prosecute Part III offences. The types of offences that will be transferred include but are not limited to certain offences under the:

- **Highway Traffic Act** (e.g. drive while license suspended);
- **Compulsory Automobile Insurance Act** (e.g. drive no insurance);
- **Liquor Licence Act** (e.g. sell alcohol without license, selling liquor to an intoxicated person); and
- **Ontario Society for the Prevention of Cruelty to Animals Act.**

In addition, the Municipal Prosecutor will be able to prosecute federal offences falling under the **Contraventions Act (Canada)**. Examples of federal offences are those brought under the **Canada Shipping Act**, the **Canada Wildlife Act** and the **Canada Marine Act**.

The Ministry's seconded legal services will continue to prosecute specialized cases, for example, those enforced by the Ministry of Labour, Environment and Transportation.

The Ministry will continue to prosecute certain Part III POA cases, including those in which a criminal charge is also laid, and charges involving Ontario's Sex Offender Registry.

Further, Part III POA cases involving a fatality, that do not also have a criminal charge laid, will be vetted by a Crown Attorney on a case-by-case basis to determine whether the Crown's Office or the municipal partner will prosecute.

Cases that involve a fatality that involve both a criminal charge and a Part III POA charge will continue to be prosecuted by Crown Attorneys.

It is anticipated that the transfer of responsibility will occur over a 2 year period with all transfers occurring by the end of 2019.

## Memorandum of Understanding

Staff understands that one master MOU will be presented to all municipalities which will contain contractual obligations, however to-date no such documentation has been provided. We also understand that the regional Crowns will be able to negotiate the specific terms with each municipality. The current MOU contains terms regarding amendments to the MOU and a dispute resolution process.

In addition, issues of mutual concern with the downloading are being discussed among the various Municipal Partners, such as who will prosecute the new **Cannabis Act, 2017** offences and service levels of judicial resources.

## Peterborough's Readiness

Staff have been aware of the proposed downloading for approximately 2-years through their respective professional organizations such as the Prosecutors' Association of Ontario and Municipal Court Managers Association of Ontario.

Staff were contacted by the Crown Attorney earlier this year to discuss the process of transfer and local planning in detail. Staff have indicated that once they've had the opportunity to review and discuss the MOU with the Attorney General and legal documentation is in place, prosecutions of Part III offences may commence. In addition, the Municipal Prosecutors have received training on the prosecution of Part III offences. The legislation provides for a transition period of 60-days.

Presently, POA prosecutions of Part I and II are undertaken 3 days a week with appeals 1 day a week. There are 2 tiers in any given day at 9:00 a.m. and 1:30 p.m. Depending on whether they are trial or resolution days, each tier may contain 25 to 60 matters.

Part III prosecutions (including appeals) at present, are undertaken at least one day a week, depending on the number of weeks in any given month and there are 3 tiers, at 9:00 a.m., 10:30 a.m. and 1:30 p.m. Depending on whether they are trial or resolution days, each tier may contain 50 to 150 matters.

Staff have reviewed the number and complexity of Part III offences and have determined that there is the necessity to have 2 FTE's to meet the additional requirements. As such, Staff recommend that the part-time Municipal Prosecutor be increased to full-time. Administratively, (office, filing space, administrative support) there are no additional costs.

Staff is presently reviewing the court tiers and looking for greater efficiencies relating to the scheduling of trials and therefore providing more options for police/enforcement availability at trials.

## Summary

Although the MOU between the City and the Attorney General has not yet been received, Staff wish to have Council's approval for the addition of a .5 FTE to meet the increased responsibilities. Staff will move forward at the appropriate time with the downloading, once they've had the opportunity to review the implications of the MOU and its impact on the City and County and formalize the process with the Crown Attorney. Joint Services Steering Committee at their meeting on June 14<sup>th</sup>, endorsed the report and the addition of the .5 FTE Municipal Prosecutor.

Submitted by,

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Commissioner of Corporate and Legislative Services

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