

City of Mississauga

Corporate Report



<p>Date: June 11, 2021</p> <p>To: Chair and Members of General Committee</p> <p>From: Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: June 23, 2021</p>
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Subject

Bill 177, Stronger, Fairer Ontario Act (Schedule 35) impact on Provincial Courts

Recommendation

1. That the report entitled, "Bill 177, *Stronger, Fairer Ontario Act* (Schedule 35) Impact on Provincial Offences Courts", from the Commissioner of Corporate Services and Chief Financial Officer, dated, June 11, 2021, be received.
2. That the Attorney General of Ontario be requested to halt the proclamation of the Early Resolution reforms included in Bill 177, *Stronger, and Fairer Ontario Act*.
3. That the Attorney General of Ontario be requested to review the Early Resolution provisions of the *Provincial Offences Act* and take action to streamline and modernize this section with a view to making it easier for the public and prosecutors to engage in resolution discussions, and to administer early resolution proceedings in Provincial Offences Court.
4. That the Attorney General of Ontario be requested to enact changes to the *Provincial Offences Act* and any related regulations, to permit the prosecutor and defendant or legal representative to agree, at any stage of a proceeding, to a resolution in writing for proceedings commenced under Part I of the *Provincial Offences Act* and to permit the Clerk of the Court to register the court outcome immediately upon receipt of the written agreement without requiring an appearance before a Justice of the Peace.
5. That the Attorney General of Ontario be requested to allocate additional judicial resources to Mississauga.
6. That the Attorney General of Ontario be requested to make regulatory changes to allow camera-based offences to be administered through the administrative penalty system.

7. That the Attorney General of Ontario and the Ministry of Transportation be requested to make amendments to increase administrative fees under O.Reg. 945 and improve the collection mechanisms related to POA fines.
8. That this resolution be circulated to the Premier, Attorney General, Local MPP's, AMO and all local municipalities with Provincial Offences Courts.

Executive Summary

- The proposed Early Resolution reforms in Bill 177, *Stronger, Fairer Ontario Act* do not fully support the objectives of the Ministry of the Attorney General pertaining to creating a modernized and efficient justice system
- The changes create procedural barriers that prevent reasonable and effective access to court procedures by replacing a simplified process currently in place with a complex lengthy process
- Limited judicial resources continue to impact the workload of the Provincial Offences Court
- Camera related charges such as red-light camera, automatic speed enforcement and proposed school bus camera stop arm charges should be legislated through the Administrative Penalty System to streamline the system and free up much needed court time for other matters.

Background

The Provincial Offences Act Courts (POA) have long advocated for legislative reforms to streamline and modernize Provincial Offences Act Courts supporting equitable and timely access to justice. Immediate regulatory and legislative changes are critical to delivering services to the public by putting in place the most modern, efficient and effective justice system attainable.

Throughout 2020, due to the pandemic, the Chief Justice of Ontario and the Province of Ontario issued orders adjourning all court matters, suspending all POA timelines and later extending these timelines into 2021. These orders have significantly affected court service operations for over one year. As part of the court recovery, the Chief Justice advised that non-trial matters could proceed by audio proceedings. Mississauga's Provincial Offences Court commenced with remote audio proceedings in August 2020 for early resolution courts and in February 2021 for case management courts. Virtual trial proceedings are scheduled to commence in August 2021 based on regional and local judicial approval and court readiness. Due to court closures and limited judicial resources, the backlog of court matters has intensified. Court revenues have also been impacted by the extension of the time in which to pay a fine. It is important to note that this is considered deferred revenue, as all outstanding fines are debt to the Crown owed in

perpetuity and never forgiven. The ability to collect on debt diminishes, however, the older a fine becomes.

Bill 177, *Stronger, Fairer Ontario Act*, Schedule 35 proposes amendments to the *Provincial Offences Act*. The amendments include reforming the Early Resolution process, improving the collection of default fines and expanding the powers of the clerk of the court. In December 2019, the Ministry of the Attorney General advised that it intended to implement Bill 177 through a phased approach. To date, only one section of the Bill related to the POA has been proclaimed and implemented. The balance of the Bill 177 amendments are scheduled to be proclaimed later in 2021. Based on a detailed review, the proposed Early Resolution reforms in Bill 177 will replace a simplified process currently in place, with a process that is complex and less efficient.

There are multiple levels of courts operating in Ontario and the Provincial Offences courts are not given priority status. As such, these courts are directly impacted by the shortage of judicial resources. At the same time, increased dispute rates are the driving need to schedule more trials. Given the extended court closures over the period of the pandemic the impact will be long lasting and needs to be addressed.

The Ministry of Transportation has not enacted a regulation pursuant to s. 21.1 of the *Highway Traffic Act (HTA)* to support an administrative monetary penalty system for HTA camera-based offences such as automated speed enforcement, red-light camera offences and proposed school bus camera stop arm offences. The addition of these new charges to the POA system will further exacerbate the backlog of matters before the courts.

Comments

Bill 177, *Stronger, Fairer Ontario Act* (Schedule 35)

Early Resolution (ER) is an optional program offered by Provincial Offences Courts to allow defendants an opportunity to request a meeting with a prosecutor to resolve the charges prior to a trial. In August 2020, ER matters were the first POA proceedings to resume in the City during the pandemic. The resolution rate for ER is approximately 75% of charges for which this option is selected. Prior to the pandemic, ER accounted for the resolution of approximately 20% of all Part I charges filed. The high rate of participation by the public in the ER process is a clear indication that the existing process provides an easy-to-understand and effective way to resolve minor offences.

The amendments proposed in Bill 177 will create a more complicated legislative framework with an approximate 60% increase in the number of rules that apply to the process. Under the proposed legislation, the Province has added multiple complex time periods and additional rules to navigate. The proposed changes will make it more difficult for the public to understand what is expected of them and complicate the administration of the courts. The proposed new ER

process involves different processes that are dependent on the nature of the resolution reached with the prosecutor. In some cases, the defendant has to appear before a Justice of the Peace to register the conviction and there are potential additional appearances required by the defendant and the prosecutor. In other cases, an appearance before a Justice of the Peace is not required; however, there is a new abandonment period before an outcome is registered. The inclusion of this abandonment period is not necessary, as there are existing remedies in the POA, including a right to appeal conviction or sentence.

Staff have conducted a review of the impact the proposed changes will have on administrative processes and City resources. The Bill 177 changes to the Early Resolution section of the POA will increase processing steps from the existing 15 administrative processes to over 70 processes. This represents an increase in processes of over 400%. Although City staff have digitized a number of existing early resolution processes to allow a defendant to file their request electronically, the City must use and rely on the Province's antiquated adjudicative case management system. Given the lack of a modern adjudicative case management system and the additional complex legislative processes under the proposed changes to the Early Resolution section of the POA, the Court Administration office will require an additional full time Court Clerk with an impact to the divisional staffing budget to administer the proposed lengthy and complex early resolution process upon proclamation. Implementation of the proposed new early resolution process will also affect the Legal Services Division. Prosecutors will have to be scheduled for multiple appearance dates after the original meeting with the defendant. The prosecutions section will also need to devote additional resources to tracking abandonment periods. A modern, efficient and effective justice system requires convenience and ease of access for the public, and simplified, efficient processes that provide proportionate options to the public for minor offences under Part I of the POA. To ensure a simplified and efficient ER process, the POA must be amended to provide that any resolution meeting between the defendant and the prosecutor can be held in writing and that all written agreements reached between the prosecutor and defendant can be filed with the Clerk of the Court.

Judicial Resources

In addition to the changes proposed through Bill 177, it is critical that additional judicial resources be provided to Mississauga. The court closures noted earlier have put significant pressures on already reduced judicial resources. Because of the pandemic, the City of Mississauga faces a significant POA backlog of early resolution and trial cases. This backlog cannot be addressed without more judicial resources. Consequently, we request the support of the Ministry of the Attorney General in ensuring sufficient judicial resources are made available to the City of Mississauga for this purpose.

Camera Related Charges and the Administrative Penalty System

A number of additional charges are coming forward that are currently dealt with through the POA system, including Automated Speed Enforcement (ASE), Red Light Camera (RLC) and

School Bus Camera Stop Arm. Given the tremendous backlog of items before the courts, it is recommended that these matters be dealt with more efficiently and effectively through the Administrative Penalty System (APS). Including these types of offences in the POA court will only add pressure on an already overburdened system and increase delays. The APS is administered and adjudicated by City of Mississauga staff, allowing the City to provide additional resources when required through the revenues generated by the offences. It is expected that thousands of charges will be laid by the ASE program. Mississauga has a very high rate of charge dispute that could be better managed outside of the POA system given the limited access to judicial resources.

Declining Fine Revenue

The City's ability to recover cost of operating through fine revenue is diminishing due to increasing operational costs (e.g. investing in new technology, increasing request for disclosure and trials, etc.). The transfer of Part III prosecutions to municipalities will result in an additional increase in operating costs. Finally, the City is limited in the tools available to pursue fine collection. To address these issues, the ability to increase administrative fees under O.Reg. 945 and improve the collection mechanisms related to POA fines would improve our ability to collect revenues and continue to modernize the POA system.

Financial Impact

There are no financial impacts resulting from the recommendations in this report.

Conclusion

In August 2020, the Provincial Offences Courthouse reopened to provide administrative services. In addition, non-trial audio proceedings including early resolution began. However, the extension of POA timelines along with limited judicial resources has significantly added to the Court scheduling backlog.

The Early Resolution process could aid in municipal POA court recovery if amendments are made to make it easy and convenient for the public and prosecutors to engage in resolution discussions.

Additional judicial resources are critical to address outstanding and incoming matters before the courts. Without the resources, the backlog will continue to grow and adversely affect timely access to justice.

By expanding the Administrative Penalty System to include camera related charges, scarce judicial resources can be allocated to deal with POA matters and ensure the camera related matters are dealt with in a timely manner.

To ensure a modern, streamlines POA Court that is efficient, effective equitable providing timely access to justice, the comments outlined in this report should be addressed by the Attorney General of Ontario and the Ministry of Transportation.

Attachments

N/A



Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer

Prepared by: Diana Rusnov, Director of Legislative Services and City Clerk