



## Council Report

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| <b>Report Number:</b>    | <b>LGL2024-002</b>   |
| <b>Meeting Date:</b>     | July 23, 2024  |
| <b>Title:</b>            | <b>Potential Part 3 Provincial Offences Act Download from Province to City of Kawartha Lakes</b> |
| <b>Description:</b>      | Recommendation and update respecting request to consider Part 3 POA download to the City.        |
| <b>Author and Title:</b> | Kimberly Page, Municipal Prosecutor  |

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### Recommendation:

**That** Report LGL2024-002, **Potential Part 3 Provincial Offences Act Download from Province to City of Kawartha Lakes**, be received; and

**That** Council direct Staff to advise the Province that the City of Kawartha Lakes declines a voluntary download of this work.

**Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

This report addresses the potential transfer of Part III Prosecutions from the Ministry of the Attorney General to the City of Kawartha Lakes, and seeks direction pertaining to same.

As part of the transfer of responsibility for the administration and prosecution of Provincial Offences Act (POA) matters pursuant to an agreement with the Province in 2000, only the responsibility for the prosecution of Part I POA charges was transferred to the City. The Province retained the prosecution of the Part III charges; which are more serious charges that include fatalities, serious personal injury, and more significant penalties including fines of a high dollar value than what is available under Part I of the POA.

In 2018 the Province enacted Bill 177: Stronger, Fairer Ontario (Budget Measures) Act, which permits the province to enter into an agreement with Municipalities to download responsibility for the prosecution of Part III POA charges. Pursuant to Bill 177, the Ministry of the Attorney General is now seeking to transfer the prosecution of Part IIIs and Part IX matters from the Crown to municipalities on a voluntary basis.

It is not mandatory for municipalities to take on the transfer at this time. To date, the Ministry of the Attorney General (MAG) has been taking a phased approach to the voluntary transfer of this Part III work with the timing of individual transfers across the Province being informed by local site readiness and capacity. As of May 23, 2024, seventeen municipalities within Ontario have completed the transfer. Should the City of Kawartha Lakes opt to participate in the voluntary transfer at this time, such transfer would result in an increased workload for the Court Services Prosecution Team.

In order to operationalize the program within the City of Kawartha Lakes Court Services, staff are of the opinion that a restructuring of the Prosecution Team would be required to address the additional workload, including the addition of 2 new permanent full time employees.

## **Rationale:**

This transfer would increase the scope of control that Court Services would have over the prosecution and management of such cases, including the opportunity to achieve efficiencies in use of court time.

This benefit would be accompanied by an increase in costs as well as additional staffing resources required to conduct and provide administrative support for the prosecution of these charges. Based on Court Services' proposed 2025 Operating budget, including projected revenues, the addition of this program change would result in a projected net expense for the upcoming budget year.

Based on the previous 5 years, the City of Kawartha Lakes receives an annual average volume of 910 Part III cases, which would fall under the Crown's prosecution responsibilities, as outlined in the chart below.

| <b>Annual Part III Cases</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>2023</b> | <b>5 Year Average</b> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-----------------------|
| TOTAL                        | 1,137       | 765         | 609         | 788         | 1,252       | 910                   |

The current average fine revenue from Part III matters is \$594,682 per year as shown in the table below.

| <b>Annual Part III Fine Revenue</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>2023</b> | <b>5 Year Average</b> |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|-----------------------|
| TOTAL                               | \$853,190   | \$560,080   | \$523,736   | \$507,344   | \$529,058   | \$594,682             |

At present, the current average expense of Part III Prosecutions is \$9,078 per year, as shown in the table below.

| <b>Annual Part III Prosecution Costs to Court Services</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>2023</b> | <b>5 Year Average</b> |
|--|-------------|-------------|-------------|-------------|-------------|-----------------------|
| TOTAL  | \$11,344    | \$2,879     | \$6,344     | \$11,010    | \$13,814    | \$9,078               |

The transfer of Part III prosecutions could not be successfully absorbed with the existing full time employees based on the significant workload increase in terms of case numbers and case complexity. Prosecution Services cannot absorb the additional workload associated with the download of Part III prosecutions within existing staffing

levels. Failure to hire additional staff will compromise the integrity of all prosecutions as existing staff will be unable to adequately prepare for court or provide disclosure to the defendants, as legally mandated. This may potentially result in charges being dismissed, resulting in cost orders against the City, loss of revenue as well as an inability to maintain the integrity of the justice system as required under the Memorandum of Understanding (MOU) with the Province. The primary drivers of enhancing customer service and program consistency that support this program change would be severely undermined if the prosecution is unable to meet its responsibilities related to timeliness of prosecution, ability to be responsive, and the ability to meet requirements for timely disclosure, as outlined in Schedule 1 of the MOU.

The Crown Attorney's office in the City of Kawartha Lakes currently uses 1 full time equivalent (FTE) for the Provincial Prosecutor position, shared with the County of Northumberland as well as minimal administrative support to perform prosecutions for the Part III and Part IX matters. The Assistant Crown Attorney currently deals with all Part III appeals which, in the event of the transfer, would fall to the City Prosecution Team. The Crown's office has provided the following averages to illustrate the Part III related workload:

- 910 Disclosure Packages Prepared Annually by Provincial Prosecutor
- 22 days of court (on average) annually by Crown Prosecutor requiring two Prosecutors in Court on those dates

At the current time, City's Prosecution Team complete the following:

- Over 4,000 Disclosure Packages Prepared Annually by one Prosecution Clerk
- 34 days of court annually
- 12 appeal days annually
- 45 days of Early Resolution annually

Based on the known workload of Part III transfers related to annual disclosure requests and number of court appearances, the current Prosecution resources would be insufficient and unable to absorb this additional work.

The City of Kawartha Lakes currently provides prosecution services to the County of Haliburton, pursuant to agreement between the two municipalities.<sup>1</sup> Accordingly, the City's decision impacts the provision of services to the County in that additional services will not be offered to the County, should the recommendation be approved by Council.

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<sup>1</sup> The City is compensated for this work, pursuant to the terms of the agreement.

### **Other Alternatives Considered:**

None.

### **Alignment to Strategic Priorities**

The recommendation in this report aligns with the strategic priority of “good government” as set out in the 2020-2023 Kawartha Lakes Strategic Plan, as this report pertains to the administration of the Provincial Offences Court program as a core service to residents and visitors to the City and the recommendation, based on fiscal and operational impacts of the proposal, supports the goal of enhanced program effectiveness, court modernization, fiscal responsibility and supporting community safety across the City.

### **Financial/Operation Impacts:**

Court Services is currently billed \$109/hr for in-court Part III provincial prosecution services, which is presently charged and remitted to the Consolidated Revenue of the Province of Ontario. The City does not pay the Province for any appeals court appearances, judicial pre-trials, or “out of court” work that is conducted by the Provincial Prosecutor or related administrative support needed to support the prosecution of those charges.

The revenues from any fines associated with Part III matters are already included in revenues received by the Provincial Offences Administration Court Services. As such, there would be no additional revenue associated with this transfer. The transfer is essentially a download of prosecution services from the Province to the City. The transfer would eliminate the existing budgeted expense of the hourly fee of \$109/hour for the Crown Prosecutor. However, the Crown’s office presently utilizes 1/2 FTE to support these prosecutions and current fees do not include time spent in appeals court, time spent in Judicial Pre-Trials (JPT), or any out of court time; file preparation, trial preparation, Crown Pre-Trial (CPT) meetings, etc., which would need to be completed by the City of Kawartha Lakes Prosecution Services Division upon transfer. The Provincial Crown’s office also utilizes Assistant Crown Attorneys for appeals, along with some administrative support, which are also not included in these current fees.

In order to operationalize the program within the City of Kawartha Lakes Prosecution Services, Staff propose that a restructuring of the Prosecution Team would be required to address the additional workload, including the addition of 2 new permanent FTEs. The resulting total estimated net expenditure to the City for 2025 would be \$315,676; being the combined salaries and associated costs of restructuring the Prosecution Team

and adding 2 new full time employees (1 Prosecutor and 1 Prosecution Clerk) including minor IT purchases, training and education costs, and membership and licensing fees.

The current office space the Prosecution Team occupies will not accommodate 2 additional full time employees without major renovations, which would be subject to approvals from the Province (the landlord at 440 Kent Street, Lindsay).

Total annual budget impact (costs only):

| <b>Object of Expenditure</b>         | <b>2025</b>      |
|--------------------------------------|------------------|
| Salaries & Benefits – 2.5* Employees | \$292,406        |
| Training & Development               | \$1,500          |
| Professional Dues and Memberships    | \$1,600          |
| Telecommunications                   | \$1,500          |
| Office Supplies                      | \$500            |
| Equipment Expenses                   | \$8,170          |
| Building Maintenance and Repairs     | \$10,000         |
| <b>Gross Expenditures</b>            | <b>\$315,676</b> |
| Other Revenue                        | \$0              |
| <b>Gross Revenue</b>                 | <b>\$0</b>       |
| <b>Net Impact</b>                    | <b>\$315,676</b> |

\* See further information, below.

The cost related to these program changes would be offset by **savings of approximately \$10,000 annually**, as the City would no longer be paying for the in-court time of the Provincial Prosecutor.

Therefore, the estimated **total net financial impact of the proposed transfer is expected to be \$305,676 in 2025** (with increases in future years due to COLA and inflation).

The current Prosecution Team Structure (Base Budget, Full Time Employees) is as follows:

- 0.5 Manager Prosecutions
- 1 Prosecutor
- 1 Prosecution Clerk

In order to support a program change of this magnitude, an enhanced Prosecution team structure is required and would include the introduction of a full time Manager of Prosecutions, an additional Prosecutor and an additional Prosecution Clerk:

- Add 0.5 Manager Prosecutions
- Add 1 Prosecution Clerk
- Add 1 Prosecutor

The proposed changes would then result in the following new Prosecution Team Structure (Base Budget, FTEs):

- 1 Manager Prosecutions
- 2 Prosecutor
- 2 Prosecution Clerks

Part III prosecutions are more complex and require more time than Part I ("ticket") charges to review and prepare for trial. Part III matters also require more experience and different skill sets, as responsibilities include addressing more serious matters such as fatalities and dealing with victims. Responsibility for Part III prosecutions would be shared between the Prosecutors and the Manager of Prosecutions.

An additional Prosecution Clerk will be required to support in the preparation of approximately 910 disclosure packages annually, in addition to the preparation of files and materials for court appearances.

Should the City opt not to support participation in the voluntary transfer at the present time, there is no known immediate financial impact based on information currently available. To date, there has not been any communication regarding pending changes to the fees paid to the Province for prosecution, or any communications regarding mandatory transfer of Part III Prosecutions from the Province to the municipalities.

Any additional potential future impacts remain unknown, however could potentially include:

- Change in fees for prosecution charges by the Province; and
- Shift from voluntary transfer to a mandatory transfer at a later date, potentially resulting in:
  - unplanned mid-year budget impact; and
  - decreased flexibility in terms of start date based on site readiness (and resulting operational pressures of implementation)

**Consultations:**

Manager of Provincial Offences

**Attachments:**

None.

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**Department Head: Robyn Carlson**

**Department File: None.**