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## **2006 BUDGET BRIEFING NOTE: Impact assessment resulting from continuing shortage of Justices of the Peace**

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**Issue:** As part of the Court Services 2006 operating budget review held during the January 27, 2005 Budget Advisory Committee, the Director was requested to report on the impact of the continuing shortage of Justices of the Peace, including financial implications. This briefing note has been prepared in response to this request to be considered during the wrap up meeting.

### **Background:**

The transfer from the Province to the City of administrative and prosecutorial responsibilities relating to proceedings under the Provincial Offences Act was completed in February 2002. At transfer, there were a total of 17 trial courtrooms across 4 courthouses within the City. Following an assessment of capacity requirements, between 2002 and 2004 an additional 6 trial courtrooms were constructed. In 2004, as part of the transfer agreement, the city vacated the former provincial offences court office located at 47 Sheppard Avenue East and now operates 3 courthouses including Old City Hall, 1530 Markham Road and the former York Civic Center.

Court Services staff schedule trials for charges where either a court appearance is mandatory or where trials are optional and a person charged with an offence requests a trial. Currently, 46% of persons charged with a ticketable offence (excluding parking tickets) request a trial. This represents about 250,000 charges a year that need to be scheduled for trial. In addition, a total of approximately 110,000 trials were requested respecting parking tickets. The Division is also responsible for supporting the court and providing hearings on additional cases other than ticketable charges. These matters require considerable court time to address serious charges including cases involving fatalities. As a result of the variety and seriousness of charges, the Director is in regular contact with the senior judiciary for the purpose of discussing the court plan and obtaining direction on the use of available court space. This ensures that as well as possible, more serious charges are given the attention they require. As a result of the continuing shortage of Justices of the Peace due to further retirements of Justices of the Peace who have not been replaced, there is a loss of trial court capacity equivalent to over four courtrooms. This excludes the loss of one-half of the night court program closed last Fall. Additional reductions necessary to support vacations result in up to eleven courtrooms being closed in some weeks during the summer months. Many minor traffic offences, including speeding and other driver or vehicle related charges, and about two-thirds of trial requests on parking ticket disputes are not able to be scheduled for a trial in a timely manner.

In October 2005, the Province introduced legislation titled the Access to Justice Act (Bill 14), that, if passed, may provide limited relief to the City of Toronto should it decide to establish an alternative dispute resolution program respecting bylaw charges. At this time, staff are reviewing the potential of having a program that improves the dispute process for parking infractions without requiring Justices of the Peace. If this proceeds, the court impact would be to avoid

needing two additional Justices of the Peace and freeing up two Justices of the Peace currently assigned to parking ticket matters.

Other suggestions contained in Bill 14 include police officers not being required to attend court. This issue has, before formal consultations have begun, already been subjected to criticism. Although Bill 14 was introduced on October 27, 2005, and received significant media attention prior to and following its introduction, staff are unable to provide any indication on when the Bill may proceed through the legislature.

Regarding Justices of the Peace, Bill 14 provides for minimum qualifications for Justices of the Peace who would be appointed using a new process. The Act, if passed, would also provide flexibility in Justice of the Peace assignments by allowing retired Justices of the Peace to serve on a per-diem basis.

Until sufficient numbers of Justices of the Peace are appointed in Toronto and many other Ontario municipalities, it will continue to be difficult to ensure that charges are scheduled for trial in a timely manner. With a limited number of courts open, the ability to schedule officers to appear in court in several months time on dates where the officer is expected to be on duty and available to attend "traffic court" is problematic. As part of the 2006 budget, assuming that there is available court space before the end of 2006, staff believe using off duty dates enabling a higher number of matches between the court plan and the availability of the officer will result in a greater probability that the officer will attend in court.

Justices of the Peace shortages is not limited to Toronto courts and it is not a new issue. A shortage of Justices of the Peace currently exists in many Ontario municipalities, and is particularly acute in Toronto, York, Durham, Peel and Niagara Regions.

A review of the situation in Toronto reveals that at the time of the program transfer in early 2002, traffic cases were being scheduled, at some Toronto court locations, 12 to 13 months into the future. There was a need for six appointments at that time with an additional appointment needed for each new courtroom built (six since transfer), one for each room with an additional appointment if five or six courtrooms were opened. As a result, a total of thirteen new Justices of the Peace were needed to meet the demands of the Provincial Offences Court. Although additional appointments have been made subsequent to 2002, with additional retirements and departures occurring since then, there is currently a need for about ten new appointments to be made to meet the current demand for judicial services in Toronto.

As is the case Province wide, there is a provision in the transfer agreement that the province can recover the cost of judicial services using an hourly rate. In 2005, the Province invoiced the City for over 15,000 hours of judicial services at a cost of \$200 per hour. No Ontario municipality has debated this recovery mechanism as it recognizes that the independence of the judiciary is of paramount importance. However, as the Provincial Cabinet is responsible for making judicial appointments, many Ontario municipalities remain unable to provide a court program in an effective manner that responds to the needs of their communities.

At the annual opening of the courts address, held on January 4, 2006, the Chief Justice of the Ontario Court of Justice, the Honourable Brian Lennox noted that Ministry of Attorney General staff have, in response to the complement management plan previously prepared and presented by the Court to the Ministry, retained consultants associated with the American National Centre for State Courts to evaluate and compare available Justice of the Peace resources against service requirements. Chief Judge Lennox further commented that it is imperative that there continue to

be increases in the Justice of the Peace complement to match increased needs, particularly in the area of municipally administered provincial offences courts. The Court continues to work with officials of the Ministry of the Attorney General on these issues.

Appointments of Justices of the Peace have not kept pace with the workload or the number of Justices of the Peace who are retiring. Within ten years, about forty percent of current Justices of the Peace will have to retire. There is an opportunity to address current shortages by introducing a structured succession management strategy in step with the introduction of any legislative amendments that, if passed, may result in requiring fewer Justices of the Peace. The forecasted level of retirement activity should alleviate any concerns that may exist around making long term appointments above existing complement levels.

Presently, charges under the Highway Traffic Act are being scheduled for trial on average at about twelve months from the date of offence. There is a backlog of over 80,000 minor traffic charges and over 70,000 parking infractions that need to have a trial scheduled. Without additional court space being opened, there is a risk that many of these charges will be lost given that an individual has the right to a trial within a reasonable time as guaranteed under the Canadian Charter of Rights and Freedoms.

Insufficient operating courts have the potential to impact community safety objectives. In order that the consequences of failing to obey the law are meaningful, the court system must be able to support persons charged and who have a right to seek a trial, by providing sufficient court space for a trial to happen. It is recognized that pressures also exist within other courts that are responsible for criminal, civil and family law matters and there is a need for ensuring that operational efficiencies exist. Until legislation is amended, the ongoing workload received by the court must be attended to. As media outlets have recently reported, drivers going to court in the GTA were able to avoid being convicted at a rate four times higher than in the rest of Ontario. Provincial associations representing Municipal Court Managers, Municipal Law Directors, Prosecutors and Police Chiefs have in recent months expressed their concern to the Attorney General calling for additional Justices of the Peace to be assigned to improve the effectiveness and efficiency of the courts.

An estimate of the financial impact of charges that cannot proceed to trial in a timely manner suggests that approximately \$3.4 million (net), representing almost thirty five percent of planned net revenue, is at risk.

### **Key points:**

- The continuing shortage of Justices of the Peace threatens community safety, particularly road safety objectives. Recent media articles have reported on this issue and concerns respecting road safety and the need for the court system to be able to support these charges have also been expressed. Officials representing the Toronto Pedestrian Committee and the Ontario Safety League have recently observed that the justice system needs to be able to support enforcement efforts rather than seeing charges thrown out.
- As trials are scheduled many months into the future using days officers are scheduled on-duty, police officers are frequently excused from attending court largely due to other policing requirements on the trial date, resulting in many charges being withdrawn.
- Responding to staff reports on shortages of Justices of the Peace, Council at its May meeting requested the Premier and Attorney General of Ontario take immediate action to

increase the number of Justices of the Peace in Toronto and other municipalities to be assigned by the Ontario Court of Justice for the purpose of ensuring that community safety is not compromised by the closure of Provincial Offences courts in Toronto and all other Ontario municipalities. Since July 2005, a total of 19 appointments have been made with assignments to Toronto (5), London, Ottawa, Thunder Bay, Ottawa/Cornwall, Oshawa, Peel, and Niagara communities. While helpful, the five Toronto appointments made in September sworn in as Justices of the Peace on January 31, 2006 remain in training. When ready to preside in court by mid-2006, they will assume some of the positions that have become vacant post-September due to other retirements and long term illness still leaving a shortage of Justices of the Peace that require courts to remain closed.

- At its November 24, 2005 meeting, Council considered a staff report advising of the closure of First Attendance courts due to shortages of Justices of the Peace and again requested the Premier and Attorney General to take action to ensure sufficient numbers of Justices of the Peace are appointed and assigned to preside over the growing backlog of trial requests and to restore the first attendance program. Council also adopted the recommendation of the Administration Committee that the Mayor request a meeting with the Attorney General to communicate Council's concerns and outline the financial impacts to the City resulting from the shortage of Justices of the Peace. By letter dated December 28, 2005, Premier McGuinty responded that as the Attorney General was also copied on Council's communication, he trusted the Attorney General would take Council's recommendations into consideration.
- The financial impact of charges being withdrawn, prior to and on the day of trial and those that are at risk of being lost due to not being able to provide a timely trial given closed courts is estimated at \$3.4 million. This loss would be avoided if Justices of the Peace were available to preside in the four closed courts on an ongoing basis providing support needed to meet the current demand for trial time.

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