



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Potential Download of Responsibility from the Province of Ontario for the Prosecution of Provincial Offences Act Offences

Date: February 24, 2020

To: General Government and Licensing Committee

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report is about a position to be applied to any negotiations carried on or to be carried on by or on behalf of the City of Toronto.

SUMMARY

The Ministry of the Attorney General (MAG) in January 2020 commenced a confidential consultation process with municipalities across Ontario in relation to the current Memorandum of Understanding (MOU) and Local Side Agreements (LSA) which exist between municipalities and the Province of Ontario in relation to the responsibility for prosecuting Provincial Offences Act offences. The existing MOU and LSA between the Province and the City of Toronto was entered into at the time of the initial download of certain prosecutions formerly conducted by the Province commencing in 2002.

Confidential Attachment #1 provides further information regarding this matter.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1 to the report (February 24, 2020) from the City Solicitor.
2. City Council direct that the information in Confidential Attachment 1 to the report (February 24, 2020) from the City Solicitor be made public after the negotiations with the Province are completed and at the discretion of the City Solicitor.

FINANCIAL IMPACT

The potential financial impact cannot be determined at this time as the Province of Ontario has not yet provided to the City of Toronto the final proposed amendments to the existing MOU. There are many factors which would need to be examined including staffing, adequate facilities, and information technology requirements, which have not yet been fully assessed. However, an initial assessment would suggest that additional resources will be required for the increased responsibilities to prosecute the additional offences the Province is seeking to download to municipalities.

The existing MOU with the Province already allocates the fines generated from both municipal and provincially prosecuted Provincial Offences to the City of Toronto. Until the final proposal for the amendment to the MOU is provided, staff are unable to identify if there will be an additional revenue stream or efficiencies which would support the additional expenditures which will be generated by accepting additional responsibilities to prosecute offences under the Provincial Offences Act. A further report to Council will be submitted once staff receive the final proposed amendments to the MOU identifying the potential financial impacts.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The initial download of some provincial offences and court administration to the City was permitted under 1998 amendments to the Provincial Offences Act. Some offences, including Part III offences, were to remain with the Province.

On April 13, 14 and 15, 1999, City Council established a task force to examine the implications inherent in the POA Download and directed that no further steps be taken by staff until the proposed Task Force had an opportunity to consider the matter.

On April 11, 12 and 13, 2000, City Council authorized the Chief Administrative Officer to submit a letter of intent to the Ministry of the Attorney General for the download of responsibilities for provincial offences courts and some prosecutions.

On July 24, 25 and 26, 2001, City Council authorized the download of the Provincial Offences Courts effective January 28, 2002.

COMMENTS

Background to the POA Courts Download:

The Provincial Offences Act (POA) is a procedural law for the administration and prosecution of provincial offences, including offences created under municipal bylaws

and minor federal offences set out in the Contraventions Act. The intention of the POA framework was to allow for the prosecution of violations through a ticketing and less formal system rather than the conventional criminal system. Examples of provincial statutes that fall under the POA include the Highway Traffic Act (HTA), the Compulsory Automobile Insurance Act (CAIA), the Trespass to Property Act, the Environmental Protection Act, the Liquor Licence Act and the Safe Streets Act. Parts I, II and III of the POA differentiate between the processes used to lay charges as follows:

- Part I is used to issue tickets that provide the option of payment out of court or a request for a trial. Fines are set for each offence with the maximum possible fine capped at \$1,000.
- Part II offences are parking infractions. The City no longer uses this process to administer disputes of parking offences. As of August 28, 2017, the City uses an Administrative Penalty System to process parking violations.
- Part III is normally used for more serious offences. Charges under Part III require a court appearance. Fines are variable, the maximum set fine is \$5,000, unless otherwise set out in the offence creating legislation.

In 1998, the Provincial Offences Act was amended to allow the initial download of some provincial offences and court administration to the City. As a result of that amendment in 2000, as part of the Province's Local Services Realignment (LSR) initiative, the Province sought to download the administrative and selected prosecutorial responsibilities under the POA to municipalities. The download resulted in municipalities taking over responsibility for court administration and court support functions for charges laid under the POA. The download also shifted the responsibility of prosecuting most provincial offences and federal contraventions commenced under Part I of the POA to municipalities.

The province continued to prosecute some Part III offences; of particular importance, Part III matters initiated under the HTA and the CAIA. It is these latter matters that are at the center of the current discussion for a potential additional download.

Before accepting the additional responsibilities as proposed in 2000, City Council had established the Provincial Offences Act Download Task Force to examine the implications of doing so.

Following a period of negotiation and the development of transition plans, the City and province entered into a download agreement. The two-part agreement comprised a standard Memorandum of Understanding (MOU) that had been developed for province-wide use, and a Local Side Agreement (LSA) governing facility, human resources and other local issues.

The download for the City of Toronto was effected on January 28, 2002 as authorized by City Council in July 2001.

Subsequent Reviews

In August 2011, the Law Commission of Ontario released a report on the Modernization of the Provincial Offences Act which made several recommendations on modernization of the process and systems in place dealing with provincial offences.

Recent Amendments Permitting the Download of Additional Prosecutions

In 2017, the Legislature, through Bill 177 - Schedule 35, put in place some of the recommendations in the report on modernization including the ability to download Part III prosecutions to municipalities through an agreement between the municipality and the Province.

CONTACT

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1 - Confidential Information