

Report on Bill 177 Stronger Fairer Ontario Act Changes to Provincial Offences Act

Date: May 7 2021

To: General Government and Licensing Committee

From: City Solicitor and Director, Court Services

Wards: All

SUMMARY

This report responds to the changes to the Provincial Offences Act under Bill 177 *Stronger, Fairer Ontario Act* for City Council to review and consider taking action on the staff recommendations contained herein.

RECOMMENDATIONS

The City Solicitor and Director, Court Services recommend that:

1. City Council requests that the Attorney General of Ontario halt the proclamation of the Early Resolution reforms included in Bill 177, *Stronger, Fairer Ontario Act*.
2. City Council requests that the Attorney General of Ontario 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.
3. City Council requests the Attorney General of Ontario 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 POA 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.
4. City Council direct that this resolution be circulated to the all Municipal City Councils and Regional Councils in Ontario for support.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

The Chief Financial Officer and Treasurer has reviewed this report and agree with the financial impact information identified in the financial impact section.

DECISION HISTORY

At its meeting on June 29, 2020 City Council adopted recommendations in the report for action with confidential attachment “Potential Download of Responsibility from the Province of Ontario for the Prosecution of Provincial Offences Act Offences”.

This report requested Council adopt confidential instructions to staff in Confidential Attachment 1. It also directed that Confidential Attachment 1 be made public after negotiations with Province are completed and at the discretion of the City Solicitor. The Council decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL12.5>

COMMENTS

Immediate regulatory and legislative changes to the *Provincial Offences Act* are critical to delivering services to the public by putting in place the most modern, efficient, and effective justice system attainable.

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 to create a modernized and efficient justice system. Instead, the proposed Early Resolution reforms create procedural barriers that prevent reasonable and effective access to court procedures by replacing the simplified process currently in place with a process that is complex and less efficient.

The existing Early Resolution legislation provided persons charged with minor offences under Part I of the POA with an option to meet with the prosecutor to resolve matters without the necessity of a trial proceeding. The early resolution regime has largely been successful in Toronto by providing timely access to justice. It was also the first POA proceedings to resume during the COVID-19 emergency. The resolution rate for Early Resolution is approximately 85 % of charges for which this process is selected. Prior to the Covid-19 emergency, this accounted for the resolution of approximately 20% of all Part I charges filed. The high rate of participation by the public in the early resolution process is a clear indication that the existing process provides an easy to understand and effective way to resolve minor offences. The current legislative framework consists of one (1) section with 27 subsections and paragraphs supported by approximately 15 administrative processes. This legislative framework permits a defendant to request a meeting with the prosecutor, attend a meeting with the prosecutor and have the

outcome of the early resolution meeting recorded by the court on the same day as the meeting.

The proposed changes to the Early Resolution section of the POA under Bill 177 create a more complex legislative framework with five (5) sections and 43 paragraphs or subparagraphs. This represents an approximate 60% increase in the number of rules. Under the proposed legislation, the Province has added multiple complex time periods and a myriad of additional rules to navigate which will make it harder for the public to navigate what is expected of them as well as further complicate the administration of the courts. The proposed new early resolution system 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. The complexity of the numerous additional rules will not be easily understood by the public and access to justice for minor offences under Part I of the POA will be hindered.

City staff have conducted a detailed 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 digitally, the City remains required to 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, Toronto Court Services will require an additional six (6) full time Court Clerks with an impact to the divisional staffing budget of approximately \$500 000 to administer the proposed lengthy and complex early resolution process upon proclamation. Implementation of the proposed new early resolution process will also impact 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. It is difficult to quantify this impact at this time.

The proposed amendments to the early resolution process will result in less efficiency and more complex processes.

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. This can be achieved by amending the POA to provide that any resolution meeting between the defendant and the prosecutor can be held in writing and all that written agreements reached between the prosecutor and defendant can be filed with the Clerk of the Court, and registered as a court outcome immediately. This simplified process will provide an

accessible, streamlined, proportionate and modern early resolution process for the public.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

Susan Garossino
Director, Court Services

ATTACHMENT

Attachment 1: Bill 177 Changes to section 5.1 of Provincial Offences Act as enacted and not proclaimed.