

Date: 2021-10-04

Subject: **Bill 177, Stronger, Fairer Ontario Act (Schedule 35) Impact on Provincial Offences Courts**

Contact: **Jane Iacobucci, Manager Court Administration, Legislative Services (905) 450-1378**

Report Number: Legislative Services-2021-1087

Recommendations:

1. **That** the report titled “Bill 177, *Stronger, Fairer Ontario Act* (Schedule 35) Impact on Provincial Offences Courts from Jane Iacobucci, Manager Court Administration, Legislative Services dated October 4, 2021, be received and;
2. **That** the Mayor, on behalf of Council, write to the Attorney General of Ontario to request that:
 - a. the proclamation of the Early Resolution reforms included in Bill 177, *Stronger, and Fairer Ontario Act*;
 - b. 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;
 - c. the Attorney General of Ontario 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; and
 - d. the Attorney General of Ontario allocate additional judicial resources to Brampton.

Overview:

- 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

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. Brampton's Provincial Offences Court commenced with remote audio proceedings in July 2020 for early resolution courts and in September 2020 for case management courts. Virtual trial proceedings commenced in July 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 legislative amendments to the POA throughout the pandemic to allow for extension of the time in which to respond to a ticket, or 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, and the continued adjournments of matters due to lack of judicial resources, the impact will be long lasting and needs to be addressed immediately. In addition to the requested reforms to the Early Resolution process, action must be taken to ensure that we can continue to deliver services to the public and provide access to justice by putting in place the most modern, efficient and effective justice system attainable, with the appropriate amount of judicial resources.

Current Situation:

The existing Early Resolution legislation provide persons charges with minor offences under Part I of the POA with an option to meeting with the prosecutor to resolve matters without the necessity of a trial proceeding. The early resolution regime has largely been successful in Brampton, providing timely access to justice and were the first POA proceedings to resume during the COVID -19 emergency. The number of Part I matters processed through the early resolution option is approx. 25% of all new charges filed annually and the resolution rate is 80%

The participation in Brampton by the public in exercising this option is a clear indication that the rules under the existing Early Resolution section of the POA are easy for the public to understand and provide access to the justice system for minor offences. The current legislative framework consists of one (1) section with 27 subsections or paragraphs supported by approx. 15 administrative processes. This legislative framework permits a defendant to request a meeting with the prosecutor, request a change to the appointment date once, 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 subsections, paragraphs or subparagraphs. This represents an approximate 60% increase to the number of rules. Under the proposed legislation, although the defendant may still request a meeting and request a change to the meeting date once, when the defendant attends a meeting with the prosecutor, the outcome is not recorded by the court immediately and there is a myriad of rules to navigate that result in a court outcome. For example, depending on the agreement, a defendant may have to appear before a Justice of the Peace to register the agreement and there are potential additional appearances required by the defendant and the prosecutor before an outcome is registered by the court. In addition, there are multiple complex time periods and myriad of rules including a redundant abandonment period before an outcome is registered. The inclusion of a proposed abandonment period is redundant as fairness and administrative of justice principles already exist in other sections of the POA including the right to appeal a conviction or a sentence. The complexity of the numerous additional rules will not be easily understood by the public, will not be convenient to the public and access to justice for minor offences under Part I of the POA will be hindered.

In addition to the changes proposed through Bill 177, it is critical that additional judicial resources be provided to Brampton. The court closures noted earlier have put significant pressures on already reduced judicial resources. As a direct result of the pandemic, the City of Brampton 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 Brampton for this purpose.

Corporate Implications:

Financial Implications:

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

Other Implications:

Term of Council Priorities:

This report is consistent with the 2018-2022 Term of Council Priorities as it supports Direction 5: Brampton is a Well-Run City.

Conclusion:

In July 2020, the Brampton Provincial Offences Courthouse reopened to provide administrative Services. Non-trial audio proceedings recommenced shortly after 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.

Authored by:

Jane Iacobucci, Manager, Court
Administration, Legislative Services

Reviewed by:

Paul Morrison, Acting Commissioner,
Legislative Services

Approved by:

Paul Morrison, Acting Commissioner,
Legislative Services

Submitted by:

David Barrick, Chief Administrative Officer