

Date: October 25, 2019

Subject: **PROVINCIAL OFFENCES COURT SHORTAGE OF JUDICIAL RESOURCES – ALL WARDS**

Contact: Diana M. Soos, Deputy City Solicitor, Litigation and Administrative Law, Corporate Services, (905) 874-2437; Jane Iacobucci, Manager, Courts Administration, Corporate Services, (905) 450-1378

Recommendations:

1. **THAT** the report from Diana Soos, Deputy City Solicitor Litigation and Administrative Law, Corporate Services, and Jane Iacobucci, Manager, Courts Administration, Corporate Services, dated October 25, 2019, to the Committee of Council Meeting of November 13, 2019, regarding **Provincial Offences Court Shortage of Judicial Resources – ALL WARDS**, be received;
2. **THAT** a letter be sent to the Minister of the Attorney General and the Chief Justice of the Ontario Court of Justice signed by the Mayor on behalf of Council, requesting all parties work within a co-creative framework to address shortages of Justices of the Peace available to service Brampton POA and the Central West Region including the examination of the number and funding of the permanent complement servicing the Central West Region;
3. **THAT** a copy of this Report and a copy of the letter to the Ministry of the Attorney General directed in Recommendation 2 above, be sent to the Association of Municipalities of Ontario, the Regional Senior Justice and Regional Senior Justice of the Peace, and the Director of Court Services for Central West Region, Brampton Members of Parliament and Provincial Parliament, as well as other local area municipalities within the Central West Region.

Overview:

- The Brampton POA Court is experiencing a shortage of Justices of the Peace available to preside over provincial offence matters, which is required in order to enforce laws intended to protect the safety of our community and citizens.
- The current shortage of Justices of the Peace is a reflection of both an insufficient number of justices allocated to the Central West Region (currently 52), as well as the lack of Justices of the Peace actually available to fill the existing allocated complement (currently 40). This situation is expected to worsen in March 2020

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with anticipated judicial retirements.

- The shortage of Justices of the Peace resulted in a 34% increase in courtroom closures in 2019 and a 169% increase in courtroom closures based on the current 2020 court schedule, as compared to the 2017/2018 average.
- Given the anticipated continued population growth within Brampton and other areas of the Central West Region, the lack of complement and shortage of Justices of the Peace to service the region will continue to be a problem for Brampton and other area municipalities.
- As a result, staff are recommending the City bring its concerns regarding the lack of Justices of the Peace available to service the Central West Region to the attention of MAG and work with the Province to find a solution to the concerns identified in this report.

Background:

Pursuant to a Memorandum of Understanding (“**MOU**”) with the Province of Ontario (Ministry of Attorney General) dated April 29, 1999, the City of Brampton owns and operates the Provincial Offences Court located at 5 Ray Lawson Boulevard, Brampton (the “**Brampton POA Court**”).

In accordance with the MOU the City oversees the complete operations of the Brampton POA Court, including the administration and prosecution of regulatory (non-criminal) offences, such as charges laid under the *Highway Traffic Act* (HTA), municipal by-laws and a number of other provincial statutes. The Brampton POA Court also provides Court services for other agencies to prosecute offences that occur within Brampton, such as the Ministry of Labour and the Ministry of Attorney General that are responsible for prosecuting certain provincial offence matters that occur within Brampton.

Consequently, the Brampton POA Court and other Provincial Offence Courts around the province serve a vital role in upholding provincial laws and the City’s By-laws for the protection and safety of the community and citizens of the City. The following chart provides a summary of the number of charges filed in the Brampton POA Court in 2018 and as of the end of September 2019:

Table 1 – Provincial Offence Charges - Brampton POA Court:

	2018	2019*
Part I HTA Offences	53,756	35,729
Part III HTA Offences	4,285	3,325
Municipal By-law Offences	4,010	5,247
Other Provincial Offences	10,237	9,749

* As of September 30, 2019

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The MOU between the Ministry of the Attorney General (MAG) and the City of Brampton establishes that the Attorney General and the municipality shall work together to improve services to the public with the goal of putting in place the most modern, efficient and effective justice system attainable. It further states that the confidence of the public in the justice system must be maintained through every effort by all parties. To this end, open access to the system and a fair and timely process must be assured.

In addition, under the MOU the Ministry of the Attorney General controls the supply and allocation of Justices of the Peace who preside over provincial offence matters (and also perform important functions within the criminal court system). Adequate judicial resources are critical to support the important role and function of the provincial offences court system.

As detailed further below, the Central West Region is experiencing a significant shortage in the judicial resources allocated and available to service the area. This is having and is anticipated to have an increasingly negative impact on the justice system in the Central West Region, including negative effects on fair and timely processing of charges and on the public confidence in the justice system, and on the ability of local police services and municipal by-law enforcement to uphold important legislation and regulations intended to protect and enhance the safety of the community.

Despite collaborative efforts between the City and other local provincial offence court stakeholders to identify methods of mitigating the issues caused by the lack of judicial resources (including modifications to the court schedule to permit more efficient use of existing and available judicial resources, as well as an increase in the number of matters set per court tier together with a corresponding increase in municipal staff assigned to assist in the smooth operation of the larger court lists), as detailed below, the pressures continue to exist and intensify.

Current Situation:

The Brampton POA Court and other Provincial Offences Courts within the Central West Region are experiencing significant pressures arising from a shortage of Justices of the Peace, which is also affecting the area's criminal court system that relies on the same judicial resources.

In Brampton the shortage of judicial resources reflects both an insufficient number of overall complement of Justices of the Peace designated for the Central West Region as well as a shortage in actual Justices of the Peace currently available to service the Central West Region, which encompasses Peel Region, Halton Region, Niagara Region, Haldimand County and Norfolk County, including municipalities such as Brampton, Mississauga, Caledon, Orangeville, Milton, Burlington, Brantford, Cayuga, Simcoe, Hamilton, St. Catharines, Welland, Fort Erie and Niagara Falls.

More specifically, while the current complement of Justices of the Peace allocated to serve the Central West Region is 52, there are currently only 40 Justices of the

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Peace actually available to preside within the Region, representing a 30% reduction in the number of available Justices of the Peace. It is expected that the number of judicial vacancies will increase and reach a critical point in 2020 with anticipated judicial retirements.

Similar concerns regarding the lack of judicial resources to service the Central West Region has recently been publicly raised by a former Regional Senior Justice of the Peace and current Councillor in Mono Township.

In addition to the current shortage, it is expected the lack of available Justices of the Peace will hit a critical point in or about March 2020 when a number of Justices of the Peace that service the Central West Region are expected to retire. MAG hires and replaces Justices of the Peace only after they have retired or are no longer in service, and the process for hiring and training new Justices of the Peace takes approximately 12-16 months before they are ready to preside over court.

Court Closures

The issues caused by the current and anticipated shortage of Justice of the Peace have recently manifested as a marked increase in the number of court closures currently scheduled for 2020. More specifically, as of the date of this report there are currently 95 total and partial court days closed in 2020 representing a total of 355 courtrooms that currently have no Justices of the Peace available to preside.

Table 2 - Courtroom Closures – Brampton POA Court:

	2017	2018	2019	2020*
Courtroom Closures	125	139	177	355

*Number of Trial Courtrooms closed in 2020 as of October 1, 2019.

As reflected in the above table, in 2017/2018 the average number of courtroom closures was 132 per year. **Courtroom closures increased by 34% in 2019 and current 2020 courtroom closures represent an increase in closures of 169% as compared to the 2017/2018 average.**

These courtroom closures will have a significant adverse effect on the ability of the City to operate the Brampton POA Court and in turn to uphold provincial laws, including Highway Traffic Act violations such as speeding, careless driving, and other serious offences that are essential for the protection and safety of the community and citizens of the City.

Intake Closures

In addition to presiding over Provincial Offences Court, Justices of the Peace also play an important role in administrative processes which are essential to the justice process,

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including the swearing of Informations and Summonses (to commence Part III proceedings), reviewing applications to re-open convictions, and reviewing motions to extend time to pay fines or for failing to respond.

As a result of the lack of judicial resources, Brampton POA Court has seen a marked decrease in the number of intake court hours. By way of example, recently intake court in Brampton POA Court was reduced from two full days per week to two half days per week, and many of these reduced dates have recently been cancelled with very little advance notice due to the lack of Justices of the Peace and the resulting need to redirect available judicial resources to hearing courts and criminal courts.

This reduction in intake court hours affects not only the City's By-law Enforcement, but also Peel Regional Police, who require the services of Justices of the Peace on an intake basis to swear informations and summonses, in order to commence judicial proceedings against those that have violated provincial legislation (such as the Highway Traffic Act) and municipal by-laws.

Although the Province introduced through Bill 177, the Stronger, Fairer Ontario Act (Budget Measures), 2017 Schedule 35, legislative amendments that would assist in mitigating some of the issues caused by lack of judicial resource for intake services by permitting the clerk of the court to perform certain designed functions, the provisions designating certain functions to the clerk of the court have not yet been proclaimed. Those legislative amendments would permit the clerk of the court to perform such functions as examining and entering convictions on certificates of offence where a defendant is deemed not to dispute a charge; strike out convictions if satisfied as to certain conditions; and granting applications for extensions or further extensions of the time for payment of a fine. Permitting the clerk of the court to perform such functions would result in a corresponding reduction in the out-of-court function currently required to be performed by Justices of the Peace.

Anticipated Increase in Demand for Justices of the Peace

As of 2016 the population of Brampton was 593,638 representing a growth rate of 13.3% between 2011 and 2016, double that of the Region of Peel and three times greater than Ontario as a whole. If this recent past growth rate is any indication, it is anticipated that further population growth within the City will result in a corresponding increase in the volume of charges and pressures placed upon the Brampton POA Court.

Given the anticipated continued population growth within Brampton and other areas of the Central West Region, the lack of complement and shortage of Justices of the Peace to service the region will continue to be a problem for Brampton, unless additional Justices of the Peace are added to the permanent complement servicing the area.

It should be noted that one reason for the inadequate allocation of judicial complement to the Central West Region, may be the use of the "court utilization rate" as the basis for MAG's assessment of the need and allocation of Justices of the Peace. More

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specifically, MAG assesses the use and need for judicial allocation based on the “court utilization rate”, which is currently determined as the amount of time a Justice of the Peace is presiding in court, and does not include the time spent by those justices performing out-of-court functions. As such, the “court utilization rate” does not accurately reflect the full usage and need for judicial resources within an area.

Other Factors

In addition to the above, the Province in consultation with local municipalities is working towards the implementation of Automated Speed Enforcement (ASE). ASE will result in automatic infractions being sent to speeders within designated Community Safety Zones where ASE devices are established. It is currently expected that ASE will result in a significant increase in the number of provincial offences processed through local provincial offence courts, including Brampton POA Court.

Given the above, the introduction of ASE charges to the currently strained Brampton POA Court will intensify the already strained resources and judicial system in Brampton, unless additional judicial resources are allocated to Brampton and the Central West Region.

Effects of Lack of Judicial Resources

As noted above, the adverse effects of a lack of judicial resources are significant, and included the following:

- Reduction in access to justice in a timely manner, and frustrated defendants due to extremely large dockets and/or multiple court attendances;
- Delays in the approval of extensions of time to pay fines and/or re-open convictions (some of which may be under driver’s licence suspension pending the re-opening);
- Reduced dates available for Police Services and Municipal By-law Enforcement to swear Part III informations and summonses required to lay charges and pursue enforcement of provincial offences;
- Increase in the time to trial, which would have the effect of increasing the number of charges required to be withdrawn for delay;
- Substantial increase in workload for courts administration and prosecutions in adjourning matters, adding matters to other dockets, re-filing charges, preparing new dockets, and managing large dockets; and
- Negative impact on the public’s perception of the justice system.

More significantly, the overall effect of the above is the resulting adverse impact on the physical safety and security of the public by hindering the ability to

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adequately pursue the enforcement of provincial offences laid by the Police and the City.

Recommendation

As noted above, although the City has been working cooperatively with the local provincial offences stakeholders group to find methods of mitigating the effects caused by the lack of judicial resources, and although some success has been achieved to date through those efforts, the impending retirement of justices of the peace and the lack of sufficient overall complement assigned to the Central West Region continue to pose significant issue and concern for the proper operation of the provincial offences courts and the administration of justice within the Central West Region.

As a result, it is recommended that Council direct staff to prepare a letter to the Ministry of Attorney General and the Chief Justice of the Ontario Court of Justice requesting that all parties work within in a co-creative framework to address the shortage of Justices of the Peace available to service Brampton POA and the Central West Region, including:

- (a) adding additional Justices of the Peace to the permanent complement designated for Brampton and the Central West Region; and
- (b) investigating various methods to address the current and future shortage of Justices of the Peace available to serve both the criminal and provincial offence courts in the Central West Region, including the following:
 - (i) identify appropriate methods of succession planning for retiring Justices of the Peace, including the potential to commence the hiring process in advance of the anticipated retirement of current justices;
 - (ii) reallocating currently available Justices of Peace within the different court regions to maximize the effective and efficient use of existing judicial resources; and
 - (iii) moving forward to proclaim legislative amendments introduced in Bill 177, the Stronger, Fairer Ontario Act (Budget Measures), 2017 Schedule 35, that would permit the clerk of the court to perform certain designated functions, thereby reducing the scope work and demands on Justices of the Peace and allowing for the more effective and efficient use of the current complement of Justices of the Peace.

Corporate Implications:

Financial Implications

The lack of judicial resources and resulting reduction in operating courtrooms is expected to result in a decrease in fines collected, which are used to off-set the costs

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of operating the provincial court system, including the operation of the Courthouse and operating divisions that are part of the broader provincial court system (such as Courts Administration, Prosecutions, Finance Collections and By-law Enforcement).

Term of Council Priorities

This report is consistent with the 2018-2022 Term of Council Priorities as it supports Direction 4: Brampton is a Healthy and Safe City and Direction 5: Brampton is a Well-Run City.

Conclusion:

Staff recommend the City bring its concerns regarding the lack of Justices of the Peace available to service the Central West Region to the attention of MAG and work with the Province to find a solution to the concerns identified in this report.

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