

Date: 2022-08-29

Subject: **TRANSFER OF PROVINCIAL OFFENCES ACT PART III AND PART IX PROSECUTIONS TO THE CITY OF BRAMPTON**

Contact: **Diana Soos, Commissioner/Acting City Solicitor, Legislative Services**

Report Number: Legislative Services-2022-850

Recommendations:

1. **THAT** the report titled “**TRANSFER OF PROVINCIAL OFFENCES ACT PART III AND PART IX PROSECUTIONS TO THE CITY OF BRAMPTON**” to the Committee of Council meeting of November 23, 2022 be received;
2. **THAT** the Mayor and Clerk be authorized to execute an Interim Transfer Agreement and an Information Sharing Agreement, including any amending agreements or ancillary documents, between The Corporation of the City of Brampton and Her Majesty The Queen in Right of the Province of Ontario as represented by the Attorney General, as well as agreements with Peel Regional Police and the local Crown Attorney, in a form satisfactory to Legal Services, to transfer for a two-year term the prosecution of offences commenced under Parts III and IX of the *Provincial Offences Act* to the City of Brampton, and to permit the sharing of information with the Victim/Witness Assistance Program; and
3. **THAT** Staff report back to Council to authorize the Mayor and Clerk to execute the necessary agreements to amend the Memorandum of Understanding and Local Side Agreements and any other documents for the final, complete transfer of Part III and Part IX Prosecutions to the City of Brampton.

Overview:

- **In 1999, the Ministry of Attorney General transferred to the City of Brampton the court administration functions for Parts I, II and III of the *Provincial Offences Act (POA)*, and prosecution functions for charges under Parts I and II of the POA.**

- **In 2017 further amendments to the POA were enacted to allow for the transfer of police-laid charges under Part III and Part IX of the POA to municipalities.**
- **On August 10, 2022, Council passed Resolution CW339-2022 which directed staff to negotiate with the Ministry of Attorney General with respect to the transfer of Part III and Part IX Offences currently being prosecuted by the Ministry of Attorney General to the City of Brampton and report back to Council for final approval.**
- **Staff recommends that the City enter into the Interim Transfer Agreement and all ancillary documents that support the transfer.**

Background:

In 1997, the *Provincial Offences Act* (POA) was amended by the *Streamlining of Administration of Provincial Offences Act, 1997* (Bill 108) to permit the Attorney General and municipalities to enter into agreements authorizing the municipalities to conduct court administration and court support functions under the POA and conduct prosecutions of matters commenced under Part I (certificates of offence) and Part II (parking infractions) of the POA.

In 1998-1999 the City of Brampton entered into a Memorandum of Understanding (MOU) and Local Side Agreement (LSA) with Her Majesty the Queen in Right of Ontario, as represented by the Ministry of Attorney General, along with Intermunicipal Agreements with the City of Mississauga, Region of Peel and Town of Caledon to support the transfer of these functions.

Since that time, the City has provided court administration and court support functions for proceedings commenced under Parts I, II and III of the *Provincial Offences Act* that were previously carried out by the Attorney General. In addition, the City has provided the prosecution functions for all Part I matters previously prosecuted by the Attorney General, in addition to the charges already prosecuted by the City for by-laws and various provincial statutes.

In 2017, the *Stronger, Fairer Ontario Act (Budget Measures), 2017* further amended the POA to permit police-laid Part III (more serious charges such as driving under suspension or careless driving causing death) and Part IX matters (hearings such as those under the *Dog Owners' Liability Act*) to be transferred to municipalities.

A working group consisting of various municipalities, including Brampton, began to negotiate the terms of an amendment to the Memorandum of Understanding and Local Side Agreement with the Ministry of Attorney General in relation to the permanent transfer of the proposed additional charges. In anticipation of the transfer, the City hired

a full-time complement prosecutor in 2019, based on the history of the number of Part III matters issued by the police. Due to COVID-19, negotiations with the Province were halted and have only recently been re-commenced. Pending completion of the negotiations for the amendments to the MOU and LSA, the Ministry of Attorney General has proposed an Interim Transfer Agreement for municipalities' consideration.

The following chart provides a breakdown of the number of charges dealt with by the City over the past few years. Courts admin processes all of the charges and administrative monetary penalties; City prosecutors prosecute the Part 1 tickets, including red light cameras and automated speed enforcement, as well as Part 1 and Part III municipal matters. Currently, the Ministry of Attorney General (local Crown Attorney's Office) prosecutes the police-laid Part III matters.

	2018	2019	2020	2021	2022 YTD July
Part 1 Peel Police	53,756	35,729	42,250	20,820	10,582
Part III Peel Police	4,285	3,325	6,684	4,737	1,847
Municipal By-law	4,010	5,247	2,717	1,318	349
Red light camera	-	10,665	10,035	10,432	6,684
Automated speed enforcement	-	-	10,165	39,369	13,178
Administrative Monetary Penalties	113,251	119,634	83,636	128,286	93,418

Various smaller municipalities have already entered into the Interim Transfer Agreement. The City of Mississauga Council passed Resolution 138-2022 on June 22, 2022 authorizing its Mayor and Clerk to execute the necessary agreements “to transfer for a two-year term the prosecution of offences commenced under Part III and IX of the *Provincial Offences Act* to the City of Mississauga and to permit the sharing of information with the Victim/Witness Assistance Program.”

Mississauga is currently in the process of finalizing its agreements and processes, with an anticipated Effective Date of October 3, 2022. Mississauga will take over the prosecution functions as of December 3, 2022.

Current Situation:

On August 10, 2022, Brampton Council passed Resolution CW339-2022, directing staff to negotiate with the Ministry of Attorney General with respect to the transfer of Part III

and Part IX Offences currently being prosecuted by the Ministry of Attorney General to the City of Brampton and report back to Council for final approval.

It is recommended that the City proceed with the two-year interim transfer of the prosecution functions for the Part III and Part IX matters at this time. The additional downloads of responsibility will give the City more control over the court scheduling and will result in the more efficient use of available judicial resources. In addition, the interim period will give the City the opportunity to assess the program and the impacts on the City that may factor into the negotiations of the final agreements needed to amend the MOU and LSA.

Terms of the Agreements

The Interim Transfer Agreement will be for a two year term from the Effective Date, proposed to be in early January 2023, with the exact date to be determined based on discussions with the stakeholders. The standard terms of the Interim Agreement are generally the same as the Memorandum of Understanding. The Agreements will include the following items:

- details of the transition period (60 days) in which the Ministry of Attorney General will continue to prosecute matters including appeals;
- which matters will be transferred, and which matters will remain with the Attorney General;
- screening of charges, reporting protocols of matters likely to raise a substantial legal issue at trial or appeal, communicating with victims and witnesses;
- indemnities, insurance, WSIA coverage;
- termination including dispute resolution;
- matters involving a fatality to be reviewed on a case-by-case basis by the local Crown Attorney to determine if the Crown Attorney's office will retain the prosecution.

Brampton staff will work with stakeholders, including the Ministry of Attorney General, Peel Regional Police and the Brampton Crown Attorney's Office to finalize the necessary agreements.

Corporate Implications:

Financial Implications:

The City's courts administration has been responsible for the processing of all charges, including those currently being prosecuted by all provincial ministries and other enforcement groups within Brampton since the original transfer in 1999. No further resources are required for courts administration.

In anticipation of the transfer of these charges, Brampton hired a full-time prosecutor in 2019. At this time, no resources are required for prosecutions, however, this will be reassessed during the interim transfer period.

Other Implications:

Term of Council Priorities:

This report achieves the priority of a Well-Run City.

Conclusion:

The signing of the Interim Transfer Agreement for the transfer of certain Part III and Part IX Offences to the City will enable improved management and usage of judicial and court resources. The interim period will allow staff to assess the program and report back to Council with recommendations regarding the final transfer agreements.

Authored by:

Reviewed by:

Colleen Grant
Acting Deputy City Solicitor

Diana Soos
Acting City Solicitor/Commissioner of
Legislative Services

Approved by:

Diana Soos
Acting City Solicitor/Commissioner
Legislative Services