Report No. 3 of the Regional Solicitor was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on December 14, 2017.

Submission to the Standing Committee on Finance and Economic Affairs regarding Bill 177 – *Stronger, Fairer Ontario Act (Budget Measures) 2017, Schedule 35 – Provincial Offences Act*

Regional Council recommends adoption of the following recommendation contained in the report dated December 7, 2017 from the Regional Solicitor:

1. Council endorse the written submission to the Standing Committee on Finance and Economic Affairs with respect to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures) 2017*, *Schedule 35 - Provincial Offences Act.*

Report dated December 7, 2017 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

1. Council endorse the written submission to the Standing Committee on Finance and Economic Affairs with respect to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures) 2017*, *Schedule 35 - Provincial Offences Act.*

2. Purpose

This report provides Regional Council with an update on Bill 177, and seeks Council's endorsement of staff's December 7, 2017 submission to the provincial Standing Committee on Finance and Economic Affairs (the "Standing Committee").

3. Background

Bill 177 (Schedule 35) sets out legislative reforms to the *Provincial Offences Act* that modernize and streamline processes

Bill 177 contains 46 schedules that amend 45 different Acts and reporting requirements under various Acts. Schedule 35 contains amendments to the *Provincial Offences Act* (POA).

Under the current provisions of the (POA) the Province can only enter into an agreement with a municipality to transfer the prosecution of Part I and II offences (tickets and parking tickets respectively) as well as municipal Part III charges to municipal partners. The Province retained responsibility for the prosecution of other Part III offences such as *Highway Traffic Act* (*HTA*) charges (these are more serious offences laid by way of a sworn information).

Justices of the Peace currently deal with guilty pleas involving charges that are resolved at an early resolution meeting between the prosecutor and the defendant, reviewing certificates of offence involving defendants who failed to choose an option on their ticket and entering a conviction or quashing the charge, the reopening of convictions where a defendant was convicted without a hearing, and granting extensions of time to pay a fine.

Bill 177 would amend two key areas of the POA Court process

The amendments to the POA include provisions that would:

(a) give the Province the authority to transfer Part III prosecutions from the Ministry of the Attorney General (MAG) to municipal partners;
(b) give the clerk of the court additional powers and duties that are currently performed by justices of the peace.

York Region staff have been involved in consultation with various groups concerning POA streamlining and modernization

In 2015, the Province formed a working group of experts (the POA expert working group) to discuss ways in which the POA could be amended to streamline and modernize certain processes. In October 2015, working group meetings were held at which the Region was represented by the Regional Solicitor and the Director of Prosecutions to discuss ways in which improvements could be made to improve the efficiency of the existing court system.

The Director of Prosecutions and the Director of Court Operations have been involved in discussions with the Prosecutors' Association of Ontario (PAO) and the Municipal Court Managers Association (MCMA) respectively concerning streamlining and modernization of the POA. Several recommendations resulted from these consultations, some of which are reflected in Bill 177.

4. Analysis and Implications

Bill 177 is progressing through the Legislature at an unusually fast pace and was referred to Standing Committee on November 30, 2017. The deadline for submissions was December 7, 2017

The Ontario government introduced Bill 177 on November 14, 2017. It passed second reading on November 30, 2017, at which time it was referred to the Standing Committee. The deadline to request making oral submissions to the Standing Committee was on Tuesday December 5, 2017 and the deadline to make written submissions was on December 7, 2017. Due to this expedited timeline for written submissions, Regional staff submitted the attached written submission (see Attachment 1) before presentation to Regional Council.

The Region's submission to the Standing Committee highlights gaps in the proposed legislation that will impact the cost of operating the POA courts in York Region

The written submission to the Standing Committee was guided by the consultation with MAG through participation on the POA expert working group, and discussions with members of the MCMA and the PAO. A significant portion of the written submission focused on the wording and technical challenges associated with the proposed download of Part III prosecutions and the download of judicial functions to the clerk of the court.

The key areas of concern regarding Bill 177 are as follows:

- **Download of Part III Prosecutions (s. 162 and s. 173)** – Clear wording should be included in sections 162 and 173 on whether a new Memorandum of Understanding ("MOU") will be required, or simply an amendment to the existing MOU, between the Province and the respective Municipalities. In addition, more information is needed on the timing of the download so Municipalities can budget for the increased costs in the 2019 budget cycle.

- **Download of Judicial Functions (s. 11.2, s. 66.0.1(2), s. 9) –** Given the download of administrative functions to the clerks of the court as outlined

in these sections, the hourly fee for judicial services should be reduced to offset the additional costs to Municipalities.

- **Examination of certificate of offence by clerk s.9** – Eliminate the words "or is otherwise not complete and regular on its face" under subsection 9 (4) and clause 9 (5) (b). The criteria set out in the regulation would be sufficient, will provide certainty and will avoid the uncertainty and confusion that currently exists as to what "complete and regular on its face" means.

- **Early Resolution Provisions (sections 5.1 to 5.5)**
    - s. 5.1 (6) - Limit the number of written requests to reschedule a meeting under s. 5.1 (6) to one
    - s. 5.2(1)(a)(i) Early Resolution Agreements – The word "set" should be removed in front of the word "fine" so that the prosecutor and the defendant can agree on any fine. This would allow the clerk to enter the conviction and fine agreed upon between the prosecutor and the defendant without the need to appear before a justice of the peace if the fine is an amount different from the "set fine" for the offence.
    - s. 5.3 (2) Two days for prosecutor to file agreement on receipt from defendant – Vary the time for filing to either two business days or five days from receipt of the signed agreement from the defendant. This allows for situations where the prosecution office may not be able to respond and file the document immediately.
    - s. 5.3(7) Abandonment of agreement – Remove this provision from the legislation to allow for conviction to be entered on the day the signed resolution is filed.

5. Financial Considerations

There will be significant costs associated with the download of Part III prosecutions and additional duties of the clerk of the court. Staff have identified these additional costs as budget pressures to be addressed once the download is confirmed. The timing of these downloads will depend on when MAG will approach the Region with a new MOU or an amendment to the existing MOU. Staff are currently assessing the financial impact of the download of judicial functions to court clerks. The financial impact of Bill 177 will be reflected in future Court Services budgets.

6. Local Municipal Impact

Staff will continue to collaborate with police and municipal enforcement agencies on the impact of these downloads. The offer of early resolution as an option for defendants, which was cancelled this year due to judicial shortages, will be revisited.

7. Conclusion

The Region submitted a written submission to the Standing Committee, and staff seeks Council's endorsement of that submission. The written submission was guided and informed by the consultation process that has occurred over the past two years with various groups on streamlining and modernizing the POA. Staff will continue to monitor the progress of Bill 177 and will report further to Council on any initiatives resulting from the passage of the legislation.

The Senior Management Group has reviewed this report.

December 7, 2017

Attachments (1)

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Accessible formats or communication supports are available upon request

Attachment 1

THE REGIONAL MUNICIPALITY OF YORK
WRITTEN SUBMISSION TO THE STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Bill 177, *Stronger, Fairer Ontario Act (Budget Measures) 2017, Schedule 35-Provincial Offences Act*

Joy Hulton, Regional Solicitor
Lisa Brooks, Director Court Operations
Hans Saamen, Director Prosecutions

December 7, 2017

The Regional Municipality of York ("York Region") respectfully makes the following submissions to the Standing Committee on Finance and Economic Affairs (the "Committee") on Bill 177, *Stronger, Fairer Ontario Act 2017*, Schedule 35- *Provincial Offences Act*

Introduction

York Region operates the second largest Provincial Offences court in the Province of Ontario based on charges filed, second only to the City of Toronto. We operate 6 trial courts and 2 intake courts between two fully functioning court locations in Newmarket and Richmond Hill. Provincial Offences charges filed in York Region account for 12% of the total charge volume in the Province of Ontario (excluding Toronto). York Region has been involved in working groups and stakeholder consultation and has been supportive of initiatives by the Province to modernize and streamline processes under the *Provincial Offences Act* (POA). While Bill 177, schedule 35 contains several positive changes, there are a few sections that should be amended or removed in order to obtain the intended efficiencies of these amendments.

Summary of Main Conclusions and Recommendations

1. **Download of Part III Prosecutions – sections 21 and 23 (s. 162 and s. 173 of the POA)** – Clear wording should be included in sections 162 and 173 of the POA on whether a new Memorandum of Understanding ("MOU") will be required, or simply an amendment to the existing MOU, between the Ministry of the Attorney General and the respective municipalities. In addition, more information is needed on the timing of the download so Municipalities can budget for the increased costs in the 2019 budget cycle.

2. **Download of Judicial Functions to Court Clerks – sections 5, 6, and 13 (amendments to s. 9, 11 (2), and s. 66.0.1(2) of the POA) –** Given the download of administrative functions to the clerks of the court as outlined in these sections, the hourly fee for judicial services should be reduced to offset the additional costs to municipalities.

3. **Examination of certificate of offence by clerk – section 5 (s.9 of the POA)** – Eliminate the words "or is otherwise not complete and regular on its face" under subsection 9 (4) and clause 9 (5) (b). The criteria set out in the regulation would be sufficient, will provide certainty and will avoid the uncertainty and confusion that currently exists as to what "complete and regular on its face" means.

4. **Early Resolution Provisions – section 3 (sections 5.1 to 5.5 of the POA)**
    - s. 5.1 (6) - Limit the number of written requests to reschedule a meeting under s. 5.1 (6) to one
    - s. 5.2(1)(a)(i) Early Resolution Agreements – The word "set" should be removed in front of the word "fine" so that the prosecutor and the defendant can agree on any fine. This would allow the clerk to enter the conviction and fine agreed upon between the prosecutor and the defendant without the need to appear before a justice of the peace if the fine is an amount different from the "set fine" for the offence.
    - s. 5.3 (2) Two days for prosecutor to file agreement on receipt from defendant – Vary the time for filing to either two business days or five days from receipt of the signed agreement from the defendant. This allows for situations where the prosecution office may not be able to respond and file the document immediately.
    - s. 5.3(7) Abandonment of agreement – Remove this provision from the legislation to allow for conviction to be entered on the day the signed resolution is filed.

Submissions

1. **Download of Part III Prosecution – sections 21 and 23 (amendments to sections 162 and 173 of the POA)**

The prosecution of Part III offences is not included in the current MOU between the Ministry of the Attorney General and the municipalities. Under the proposed amendments to sections 162 and 173, it is not clear whether the province and the municipalities would have to enter into a new MOU or whether an amendment could be made to the existing MOU to allow for the download of Part III prosecutions to the municipalities

The costs associated with the download will add pressure on York Region's budget as it will require additional staff. York Region operates a full time Part III court with over 10,000 charges filed annually and more than 24,000 court appearances. York Region has estimated that additional staff will be required at a cost $550,000 per year. Court services will no longer be required to pay the province for prosecution costs ($90.00/hr., $110,000 per year) but will also no longer be reimbursed for rental costs ($9,000 per year). The net impact would be $440,000 in additional operating costs. Training will also be required for the prosecution staff.

Municipalities do not know when the transfer is expected to take place. The 2018 budget cycle has been completed for many municipalities.

We respectfully submit that the download should not occur until municipalities have executed an agreement with the Ministry, and have an opportunity to secure necessary resources

2. **Download of Judicial Functions to Court Clerks – sections 5, 6 and 13 (amendments to s. 9, 11 (2), and s. 66.0.1(2) of the POA)**

The proposed amendments to sections 9, 11 and a new s 66.0.1 would result in the download of administrative judicial functions to municipal court clerks, thereby increasing workload and demand for resources for POA court administration. Although the financial impact is unknown at this time, there will be increased costs to municipalities arising from the increase in workload and addition of quasi-judicial functions to the role of court clerks. York Region court administration is currently operating at full capacity and cannot absorb the additional workload without increasing our current staff complement, which will add to our operating costs.

Municipalities pay a fee for judicial services to the Ministry of the Attorney General. The current judicial cost model is based on the time the Justice of the Peace presides in the courtroom at a cost of $300.00/hr. This fee for service is not only for time spent presiding at a POA trial, it also covers other significant and time consuming duties of Justices of the Peace that are not charged for separately. These duties include the intake court, walk-in guilty pleas, reopening applications, time extensions and dealing with charges under s. 9 (defendants who fail to respond to the charge).

Since the Judiciary will no longer be performing a significant portion of these functions, we suggest the hourly rate for judicial services should be reduced to offset the additional costs associated with the download of judicial functions.

3. Examination of certificate of offence by clerk – section 5 (amendments to s. 9 of the POA)

Under the proposed amendments to s. 9, if a defendant fails to choose one of the three options on their offence notice (commonly called a ticket), the clerk is given the authority to review the certificate of offence (the charging document) to see if the certificate is defective as determined by the regulations. If it is not, the clerk enters a conviction. If it is defective, the clerk will quash the charge. If a defendant is convicted, they can request a review of the certificate by a Justice of the Peace. The Justice of the Peace will review the certificate to see if it is defective, as determined by the regulations, "or is otherwise not complete and regular on its face".

The problem is that the words "complete and regular on its face" are vague. This has led to several appeals, court applications and decisions to interpret these words, with inconsistent rulings made by the court. This creates uncertainty in the law and makes it difficult for defendants and legal representatives advising defendants to know whether a certificate is defective and whether no option should be selected in the hope that the charge will be quashed. There have been several instances where defendants have been wrongly convicted and other instances where valid charges have been quashed.

In order to create greater certainty in the law and to eliminate the vagueness, uncertainty and inconsistency in the interpretation of these words, it is submitted that the words "or is otherwise not complete and regular on its face" under subsections 9 (4) and 9 (5) (b) should be removed. The criteria set out in the regulation would be sufficient, will provide certainty and will avoid the uncertainty and confusion that currently exists as to what "complete and regular on its face" means. It would allow defendants to look at one source, the regulation, in order to determine if the certificate is deficient. It would also make it simpler and more consistent for Justices of the Peace to review the certificate to determine if a conviction was wrongly entered by the clerk by having the same criteria used by the clerk rather than adding an additional component to the analysis.

We respectfully submit that the words "or is otherwise not complete and regular on its face" be removed in sections 9 (4) and 9 (5 (b)

4. Early Resolution – section 3 (amendments to sections 5.1 to 5.5 of the POA)

York Region supports the Ministry's streamlining efforts for early resolution, however, we do have concerns with how the legislation had been drafted, specifically the lack of flexibility in service delivery. Legislative changes should simplify the existing framework to be proportionate to the charges and to make the process fair and accessible to all yet Bill 177 fails to do so. It also limits the application of these provisions to courts that have opted to be designated as early resolution (s. 5.1) courts. This applies to fewer than 50% of all courts in the Province including York Region and is counter intuitive of the POA streamlining efforts.

We submit that the application of early resolution should be broadened to include all POA Courts.

Bill 177 fails to reduce the judicial workload for early resolution and creates additional administrative burdens. Streamlining of early resolution could be achieved with the following amendments:

(a) s. 5.1 (6) Rescheduling of meeting time – Under the current provisions of the POA, a defendant can make only one request to reschedule an early resolution meeting (s. 5.1(4)). Under the proposed new s.5.1(6), there is no limit on the number of times a defendant can request an early resolution meeting to be rescheduled. There is a large amount of administrative work in changing meeting times and dates, as well as associated costs with mailing new notices. Also, defendants may make several requests to reschedule a meeting as a way to prolong the time to trial and create delays in order to support an application involving a violation of their rights under s. 11 (b) of the *Charter of Rights* (the right to a trial within a reasonable period of time). If the charge is not resolved, it will become increasingly difficult to schedule a trial within a reasonable time frame as required by s. 11(b) of the Charter. While the delay may be attributed to defence tactics, it will still require time for prosecutors to respond to these applications and for justices to hear the

applications, thus reducing the amount of court time for other cases to be heard.

We respectfully submit that Bill 177 be amended to reflect the existing legislation by limiting the number of rescheduling requests to one.

(b) s. 5.2(1)(a)(i) Early Resolution meeting agreements – Under this proposed section, the prosecutor and defendant can only agree to the "set fine" and all applicable costs and surcharges fixed by the regulations within 15 days, or such other time as the defendant and prosecutor agree to in order for the clerk to enter the conviction. The "set fine" is the fine that is fixed by the Chief Justice of the Ontario Court of Justice for the offence. There is no ability to agree to any other amount for the fine without having to appear before a justice to impose the agreed upon fine. In many cases, defendants simply want to pay a fine that is lower than the set fine for the offence. In other cases, the prosecutor will agree to the defendant pleading guilty to a lesser offence with fewer or no demerit points, but in exchange they may request that the defendant agree to a fine that is slightly higher than the set fine for that offence.

By limiting the clerk's authority to entering convictions only where the set fine is agreed to, defendants and prosecutors will still have to appear before a justice of the peace if a lower or higher fine is agreed upon. The anomaly is that the clerk can enter a conviction for the set fine, but not a lower one. A defendant will have to take time out of their day to appear before a justice of the peace to be able to pay a lower fine than the set fine. This creates additional work for an already overburdened judiciary and fails to take full advantage of the efficiencies that could be created if the clerk could enter a conviction for all early resolution agreements.

We respectfully submit that s. 5.2 (1)(a)(i) be amended by removing the word "set" in front of the word "fine" in order to allow the clerk to enter a conviction for any fine agreed to between the prosecutor and the defendant.

(c) s. 5.3 (2) Failure to File by the prosecutor – If a defendant signs and sends their written agreement to resolve a matter, the prosecution must file the document with court

administration within 2 days from the date of agreement. If the prosecutor fails to do so, the charge is deemed to be withdrawn. If the defendant sends the agreement shortly before 4:30 pm on Friday, the second day falls on a Sunday. There is an inconsistency between O. Reg 200 made under the POA, and s. 89 of the *Legislation Act, 2006* as to how this two day time period would be calculated and when the deadline would be reached.

Under O. Reg 200, section 4.2, where a period of less than 6 days is prescribed under the POA, a Saturday or holiday shall not be reckoned. Under s. 4.3, if the last day of a period falls on a Saturday or holiday, the day next following that is not a Saturday or holiday shall be deemed to be the last day of the period. In the example above, it is unclear if the second day falls on Tuesday by virtue of s 4.2 (since Saturday and Sunday are not counted in the two day period), or Monday by virtue of s. 4.3.

Under s. 89 (2) of the *Legislation Act, 2006,* the time would extend to the next business day, which in most cases is Monday. It would effectively reduce the filing time to one business day for the prosecutor to sign and file the agreement, failing which the charge is deemed to be withdrawn. If for some reason the prosecution office cannot deal with the agreement on Monday (for example being short staffed due to illness with no one in the office and the only available prosecutor(s) having to be in court), the charge will be deemed withdrawn. This is a draconian result.

We respectfully submit that this subsection should be reworded to allow the prosecutor 2 business days or 5 days (this would allow two business days when dealing with a three day long weekend) from receipt of the signed agreement to sign and file the document.

(d) s. 5.3(7) Abandonment of Agreement – The defendant may abandon the agreement within 15 days after the day he or she signed the agreement, if he or she has not made a payment referred to in paragraph 2 or 3 of subsection (4). This will result in a significant amount of administrative work for Municipalities and it is our understanding that the current Integrated Court Offences Network system cannot accommodate this process. Technological changes will be required to support the new process.

We respectfully submit that this provision should be removed from the legislation to allow for a conviction to be entered on the day the signed resolution is filed.

POA modernization is intended to streamline the judicial process and reduce administrative burden. Given the administrative burden that Bill 177 would create for municipalities, along with issues outlined above, it is unlikely that municipal POA programs including York Region would choose to offer early resolution. This will significantly undermine the Ministry's goals of streamlining and modernizing the POA Courts.

Conclusion

We respectfully submit that the above noted technical amendments and issues be considered by this Committee in its consideration of Bill 177.

The legislation as currently drafted has significant administrative and financial impacts on municipal budgets and does not allow for sufficient flexibility in service delivery. Any changes to the legislation and scope of responsibility will impact our operating budget greatly and we ask for consideration of all recommendations put forth in this document.

Thank you for taking the time to review our submission.

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