



**City of Kingston  
Report to Council  
Report Number 21-282**

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**To:** Mayor and Members of Council

**From:** Craig Desjardins, Acting Commissioner, Corporate Services

**Resource Staff:** Jenna Morley, Director, Legal Services & City Solicitor  
Sarah Gareau, Municipal Prosecutor & Senior Legal Counsel

**Date of Meeting:** November 16, 2021

**Subject:** Transfer of Part III and Part IX Prosecutions under the  
*Provincial Offences Act* to the City of Kingston

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**Council Strategic Plan Alignment:**

Theme: Corporate business

Goal: See above

**Executive Summary:**

The purpose of this report is to seek Council's approval of the transfer of Part III and Part IX prosecutions under the *Provincial Offences Act* to the City from the Province.

The City of Kingston is currently responsible for the administration of the local provincial offences court and the prosecution of charges laid under Parts I and II of the *Provincial Offences Act* (the "**POA**"). The City also prosecutes certain Part III charges under municipal by-laws and some provincial statutes, such as the *Building Code Act* and the *Fire Protection and Prevention Act*. In 2017, the POA was amended to permit the Province to transfer responsibility for the prosecution of additional charges laid under Parts III and IX of the POA to municipalities (the "**Part III Transfer**").

Following several years of consultation and engagement between the Province and its municipal partners, the Province is now prepared to proceed with the Part III Transfer to the City of Kingston as part of an interim pilot project.

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It is anticipated that this change in service delivery will provide improved flexibility and efficiency for residents through more frequent court scheduling and quicker resolution of matters. Residents should also see a greater level of consistency in terms of prosecutorial approach which will ultimately improve customer service, as defendants and their representatives will work exclusively with the Municipal Prosecutor on most POA matters.

This change will also provide the City with improved workforce workload balancing and cost-savings as the City will no longer be invoiced monthly for the Crown Attorney's expenses in prosecuting these Part III matters, which are currently billed to the City at a fixed rate per court hour.

The Ministry of the Attorney General has provided a draft Interim Transfer Agreement to the City, which has been reviewed and approved by the Legal Services Department. The implementation date for the interim Part III Transfer has not yet been confirmed by the Province but is anticipated to occur as early as January 1, 2022. This report recommends that Council delegate authority to the Mayor and City Clerk to execute all required agreements to facilitate both the interim and permanent Part III Transfer.

**Recommendation:**

**That** Council authorize the Mayor and Clerk to execute all agreements between The Corporation of the City of Kingston and Her Majesty The Queen In Right Of Ontario As Represented By The Attorney General and any other documents as may be required from time to time related to the transfer of certain prosecutions commenced under Parts III and IX of the *Provincial Offences Act* from the Ministry of the Attorney General to the City of Kingston, in a form satisfactory to the City Solicitor.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

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**Craig Desjardins, Acting  
Commissioner, Corporate  
Services**

ORIGINAL SIGNED BY CHIEF  
ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief  
Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Paige Agnew, Commissioner, Community Services	Not required
Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Transportation & Public Works	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:****Part III Transfer**

In March of 2000, the City of Kingston entered into a Memorandum of Understanding and Local Side Agreement with the Province, which transferred responsibility for the administration of the local provincial offences court and the prosecution of charges laid under Parts I and II of the *Provincial Offences Act* (the “**POA**”) to the City of Kingston. Part I offences are simple offences for which a set fine ticket may be issued. Part II offences are parking related offences. The City also prosecutes certain Part III charges under municipal by-laws and some provincial statutes, such as the *Building Code Act* and the *Fire Protection and Prevention Act*.

In 2017, the POA was amended under Bill 107, *Stronger, Fairer Ontario Act (Budget Measures), 2017*, to expand this transfer of responsibility to the prosecution of the majority of proceedings commenced under Parts III and IX of the POA to municipalities (the “**Part III Transfer**”) in order to modernize and streamline the Provincial Offences Courts. This includes offences under the *Highway Traffic Act* (e.g., drive under suspension, stunt driving, fail to remain), the *Compulsory Automobile Insurance Act* (e.g., operate no insurance), and the *Liquor Licence Act/Liquor Licence and Control Act* (e.g., sell alcohol without licence). The Criminal Law Division of the Ministry of the Attorney General will continue to prosecute certain Part III offences, such as cases where a *Criminal Code* charge has also been laid, those involving Ontario’s sex offender registry, and matters pertaining to youth. The local Crown Attorney will also have discretion to determine whether charges involving a fatality (but not involving a criminal charge) will be prosecuted by the Crown Attorney or the municipality.

In 2018, a transitional planning working group comprised of Ministry of the Attorney General staff, representatives from various municipalities, and others was established to develop an implementation strategy for the Part III Transfer and to finalize an amendment to the existing Memorandum of Understanding and Local Side Agreement to reflect the Part III Transfer. The City’s Deputy City Solicitor and Municipal Prosecutor have participated in the working group meetings on behalf of the City. The City’s positive working relationship with the local Crown Attorney’s office has enabled negotiations at the local level to proceed expeditiously.

Through discussions at the working group meetings and with the Crown Attorney, it was determined that certain municipalities, including the City of Kingston, are prepared to proceed with the Part III Transfer now, while other municipalities require more time to secure additional court facilities and hire new staff to accommodate the Part III Transfer. On that basis, the Province has established a revised transfer strategy, which will enable certain municipalities to proceed with the Part III Transfer on an interim basis until the formal Part III Transfer is finalized for all municipalities through the amendment to the existing Memorandum of Understanding and Local Side Agreements.

The Ministry of the Attorney General has provided a draft Interim Transfer Agreement to the City, which has been reviewed and approved by the Legal Services Department. The

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implementation date for the interim Part III Transfer has not yet been confirmed by the Province but is expected to occur as early as January 1, 2022.

This report recommends that Council delegate authority to the Mayor and City Clerk to execute all required agreements to facilitate the Part III Transfer, including the Interim Transfer Agreement, as well as amendments to the existing Memorandum of Understanding and Local Side Agreement with the Province.

### **Staffing and Financial Implications**

There are staffing and financial implications associated with the Part III Transfer. The City is already recruiting for a Prosecutions Clerk/Paralegal to assist the Municipal Prosecutor due to an identified need for dedicated prosecutorial support. The Prosecutions Clerk/Paralegal will also assist the Municipal Prosecutor with the increased workload resulting from the Part III Transfer, the significant backlog created by the Province's suspension of Court proceedings during the pandemic, and the additional work that will result from the City's implementation of the red-light camera program in 2022. Upgrades have already been completed to the City offices at 362 Montreal Street to incorporate additional office space.

Pursuant to Part X of the POA, the municipality receives fine revenue from both Part I and Part III charges under the POA, subject to certain exceptions. In 2019, the City's provincial offences program generated revenue in excess of \$1.3 Million. In 2020 and 2021, the City's POA revenue decreased significantly due to the Province's suspension of Court proceedings during the pandemic, as well as the provincial order requiring that all collection efforts cease in earlier parts of the pandemic. With the resumption of Court proceedings and collection efforts, it is anticipated that the City will see an increase in fine payments in 2022 as compared to 2020 and 2021. Additional expenses related to the Part III Transfer have been included in the proposed Legal Services budget for 2022.

### **Existing Policy/By-Law:**

*Provincial Offences Act*, R.S.O. 1990, c. P.33

*Stronger, Fairer Ontario Act (Budget Measures)*, 2017, S.O. 2017, c. 34 - Bill 177

### **Notice Provisions:**

None

### **Accessibility Considerations:**

None

### **Financial Considerations:**

See "Staffing and Financial Implications" above.

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**Other City of Kingston Staff Consulted:**

Alan McLeod, Deputy City Solicitor

**Exhibits Attached:**

None