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**Subject:** Court Services Update Report on Bill 177 Stronger Fairer Ontario Act Changes to Provincial Offences Act related to Early Resolution

**Report to:** Joint Board of Management, Niagara Courts

**Report date:** Thursday, August 19, 2021

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## Recommendations

1. That the Joint Board of Management recommends that Regional Council **DIRECTS** the Regional Chair to send a letter to request the Attorney General of Ontario to:
  - a) halt the proclamation of the Early Resolution reforms to the *Provincial Offences Act* included in Bill 177 *Stronger, Fairer Ontario Act*; and instead take action to review, streamline and modernize the Early Resolution provisions of the *Provincial Offences Act*;
  - b) enact changes to the *Provincial Offences Act* to permit the prosecutor and defendant or legal representative to agree, at any stage of a proceeding commenced under Part I, to a resolution in writing 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,
  - c) support the proclamation of the remainder of the Bill 177 *Stronger, Fairer Ontario Act* reforms to the *Provincial Offences Act*; and
2. That a copy of this resolution **BE FORWARDED** to the Honourable Doug Downey, Attorney General of Ontario, and copied to: other municipalities that administer Provincial Offences Courts; the Ministry of the Attorney General, and the Association of Municipalities of Ontario for support.

## Key Facts

- Legislative amendments to modernize the *Provincial Offences Act* (“POA”) were passed by the Ontario Legislature in December 2017 under Schedule 35 of Bill 177 *Stronger, Fairer Ontario Act* (“Bill 177”). These amendments include changes to reform the Early Resolution (“ER”) process, improve the collection of default fines, and expand the powers of the clerk of the court. In December 2019, the Ministry of the Attorney General advised that it intends to implement Bill 177 amendments through a phased approach.
- While many of the proposed reforms would significantly assist Provincial Offences Courts, the proposed amendments to the ER process would replace the existing

simplified process with a cumbersome and lengthy process, including complicated rules and time periods that will not be easily understood by the public, thereby impeding access to justice.

- ER is an optional program Provincial Offences Courts can offer allowing defendants who opt to dispute their charges to request a meeting with a prosecutor to resolve charges prior to trial.
- On May 6, 2021, the Municipal Court Managers' Association (MCMA) of Ontario sent a letter to all association members requesting support to halt the proclamation of the ER reforms to the POA included in Bill 177 and advocate for further Provincial reforms to streamline and modernize this section of the legislation. As a result, a number of other municipalities, including York, Caledon and Mississauga, have already advocated for this POA reform.
- Niagara Region Provincial Offences Court is among only 15 courts in Ontario offering ER, and it has been an essential process to support the administration of justice in Niagara Region.
- Staff recommend seeking the support of Regional Council to advocate to the Province for further reform to the ER process to make it easier for members of the public, and the Provincial Offences Court, to access and implement this option.

## **Financial Considerations**

There are no financial implications directly associated with this report.

## **Analysis**

Legislative amendments to the POA were passed by the Ontario Legislature in December 2017 under Bill 177. These amendments include reforming the ER process, improving collection of default fines, and expanding the powers of the Clerk of the Court.

In December 2019, the Ministry of the Attorney General indicated its intention to implement a phased-in approach to the Bill 177. To date the Ministry has only proclaimed and implemented sections allowing for use of certified evidence. Based on information received from the Ministry on May 11, 2021, further Bill 177 amendments are scheduled to be proclaimed over the next several months as follows:

- November 2021 –
  - Court Clerk Reforms (Part 1): authorizing municipal court clerks, rather than Justices of the Peace, to enter convictions where the defendant fails

to respond to a ticket and approve applications for extensions of time to pay fines.

- Q1 2022 –
  - Court Clerk Reforms (Part 2): authorizing municipal court clerks, rather than Justices of the Peace, to approve applications for reopening convictions.
  - Fine Enforcement Reforms: requiring the payment of oldest defaulted fines first and replacing the default “fee” with an administrative monetary penalty, which would be payable each time a fine is not paid by the due date); and,
  - ER reforms.

The Bill 177 reforms related to expansion of the role of the court clerk support ease of access by the public and would be very beneficial administratively, particularly in assisting the Court to manage the impacts of the pandemic and the challenge presented by limited judicial resources. Staff support the Province proclaiming those reforms as soon as possible.

However, the proposed ER reforms will replace a simplified process currently in place, with a process that is complex and less efficient, substantially increasing administrative burdens. In addition, the proposed complexity of the changes will make it more difficult for the public to understand what is expected of them and will accordingly hinder, rather than facilitate, access to justice.

ER is an optional program offered by Provincial Offences Courts to allow defendants an opportunity to request a meeting with a prosecutor to resolve the charges prior to a trial. In July 2020, ER matters were the first POA proceedings to resume in the Region during the pandemic. The current resolution rate for ER in Niagara is approximately 84% of charges for which this option is selected. Prior to the pandemic, ER accounted for the resolution of approximately 92% of all Part I charges filed. The high rate of participation by the public in the ER process is an indication that the existing process provides an easy-to-understand and effective way to resolve minor offences.

The amendments proposed in Bill 177 will create a more complicated legislative framework with additional rules, appearances by the defendant, and time periods to navigate. The proposed new ER process involves different processes that are dependent on the nature of the resolution reached with the prosecutor. In some cases, the defendant has to appear before a Justice of the Peace to register the conviction and there are potential additional appearances required by the defendant and the

prosecutor. In other cases, an appearance before a Justice of the Peace is not required; however, there is a new abandonment period before an outcome is registered. The inclusion of this abandonment period is not necessary, as there are existing remedies in the POA, including a right of appeal.

A modern, efficient and effective justice system requires convenience and ease of access for the public, and simplified, efficient processes that provide proportionate options to the public for minor offences under Part I of the POA. To ensure a simplified and efficient ER process, Staff recommend that the POA be amended to provide that any resolution meeting between the defendant and the prosecutor can be held in writing and that all written agreements reached between the prosecutor and defendant can be filed with the Clerk of the Court, without need for an appearance before a Justice of the Peace. In addition to supporting a more efficient process that expedites dispositions for defendants; this would also conserve court time and judicial resources for contested matters.

### **Alternatives Reviewed**

The Joint Board of Management and Regional Council could decline to pursue the opportunity to advocate for further ER reforms to the POA.

### **Relationship to Council Strategic Priorities**

Court Services aims to continually support Regional Council's Healthy and Vibrant Community priority, as it pertains to the administration of the Provincial Offences Court program and the overall goals of community safety across Niagara.

### **Other Pertinent Reports**

JBM-C 2-2020 [Bill 177 Update](#)

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## **Appendices**

None