

# Transfer of Part III and Part IX Prosecution

**Type:** Growth/New Programs

**Department:** Corporate Services

**Committee Report:** JBM-C 7-2024

**Case Start Date:** 2025-01-01

## Alignment to Council’s Strategic Priorities

Effective Region	Green Resilient Region	Equitable Region	Prosperous Region
100%	0%	0%	0%

Through the transfer of Part III and Part IX Prosecutions, Court Services aims to support Regional Council’s Effective Region objective by enhancing customer service and maximizing the efficient use of court time and resources as a continuous improvement initiative.

## Description

As part of the transfer of responsibility for the administration and prosecution of Provincial Offences Act (POA) matters pursuant to an agreement with the Province in 2000, only the responsibility for the prosecution of Part I POA charges was transferred to the Region. The Province retained the prosecution of the Part III and Part IX charges; which are more serious charges with higher penalties.

In 2018 the Province enacted Bill 177: Stronger, Fairer Ontario (Budget Measures) Act, which permits the Province to enter into an agreement with Municipalities to download responsibility for the prosecution of Part III POA charges. Pursuant to Bill 177, the Ministry of the Attorney General (MAG) is now seeking to transfer these matters from the Crown to municipalities on a voluntary basis, with the timing of individual transfers across the Province being informed by local site readiness and capacity.

Court Services is currently billed \$109/hr for in-court Part III provincial prosecution services. The Region does not pay the Province for any appeals court appearances, judicial pre-trials, or “out of court” work or related administrative support undertaken for the prosecution of those charges.

The Crown Attorney’s office in Niagara currently uses 2 FTEs: 1 for the Provincial Prosecutor position and 1 to perform Prosecution Assistant support. The Crown’s office also regularly utilizes 2 articling students to assist with managing prosecution and workload. The Crown’s office have provided the following averages to illustrate the Part III related workload:

1500 Disclosure Requests Completed Annually by Crown Prosecution Assistant  
115 days of court annually by Crown Prosecutor

At the current time, Regional Prosecution Team complete the following:  
2457 Disclosure Requests Completed Annually by Prosecution Coordinator  
136 days of court annually per Regional Prosecutor (not inclusive of appeals, judicial pre-trials and conflict court matters)

Based on the known workload of Part III transfers related to annual disclosure requests and number of court appearances, the current Prosecution resources would be insufficient and unable to absorb this additional work.

From 2019 to 2023, Niagara received an annual volume of 3,465 Part III cases which would fall under the Crown's prosecution responsibilities. Based on the same 5 year period, the average annual expense of Part III Prosecution by the local Crown's office is \$44,246 per year.

In order to operationalize the program within Court Services, Staff propose that a restructuring of the Prosecution Team would be required to address the additional workload, including the addition of 2 net new permanent FTEs (further details below).

The total estimated net operating impact for 2025 would be \$217,990, half funded by the LAMs and half funded by Regional Levy netting to \$108,995; being the combined salaries and associated costs of restructuring the Prosecution Team and adding 2 net new FTEs (1 Prosecutor II FTE and 1 Prosecution Coordinator FTE) including minor IT purchases, training and education costs, and membership and licensing fees, with these expenses partially offset by savings of approximately \$42,000 annually in administration costs. The net reduction in administration costs is a result of the removal of in-court time of the Provincial Prosecutor (budgeted at \$50,000 in 2024) as a result of the transfer to POA and is partially offset by membership dues and fees, professional development costs and office supplies.

The current Prosecution Team Structure (Base Budget, Non-VZ FTEs) is as follows:

- 3 Prosecutor FTEs
- 1 Prosecution Coordinator FTE

In order to support a program change of this magnitude, an enhanced Prosecution team structure is required and would include the introduction of a Prosecutor I role and a Prosecutor II role, through the conversion of 3 existing FTEs in addition to adding 2 net new FTEs as follows;

- Add 1 Prosecution Coordinator FTE
- Add 1 Prosecutor II FTE
- Convert 1 existing Prosecutor FTE to Prosecutor II role
- Convert 2 Prosecutor FTEs to Prosecutor I role

The proposed changes would then result in the following new Prosecution Team Structure (Base Budget, Non-VZ FTEs):

- 2 Prosecutor I FTEs
- 2 Prosecutor II FTEs
- 2 Prosecution Coordinator FTEs

Part III prosecutions are more complex and require more time than Part I ("ticket") charges to review and prepare for trial. Part III matters also require more experience and different skillsets as responsibilities include addressing more serious matters and dealing with victims. Responsibility for Part III prosecutions would be shared between the Prosecutor II roles and the Manager Prosecution and Collections. The Prosecutor I role would be a repurposing of the current Prosecutor role, which would be responsible for the prosecutions of Part I matters (no change).

An additional Prosecution Coordinator will be required to support in the preparation of approximately 1500 disclosure requests annually, in addition to the preparation of files and materials for court appearances.

This proposed restructuring represents a lower level of resources than is currently utilized by the Crowns' office to perform the same work, given that the Crown's office also utilizes two articling students per year, as well as two additional law students every summer to assist with POA Part III prosecution and administration in addition to the 2 FTEs.

## **Business Reasons**

Primary benefits anticipated following the transfer of these prosecutions are enhancements to customer service, program consistency and more efficient use of court time. For example, currently, Part III defendants attend court matters at 445 East Main Street, however the Crown Prosecutor (CP) does not work onsite. Defendants must contact CP directly for information related to their case and may only obtain disclosure at the Criminal Courthouse location during specific dates and times; whereas upon transfer, defendants would be able to obtain disclosure or contact staff at the POA Courthouse in Welland at any time during normal business hours; streamlining service to one team, one building with enhanced hours. Additionally, this transfer would increase Court Services' scope of control over the prosecution and management of such cases; including the opportunity to achieve consistency in outcomes and efficiencies in use of court time.

Staff have engaged in consultation with other municipalities who have completed transfer and have confirmed the positive benefits of this program change, including enhancements related to program consistency, customer service and optimization of court time. In light of the increased number of municipalities have engaged in the transfer have experienced benefits as a result, staff recommend moving forward with voluntary transfer to mitigate potential risk of future mandatory transfer and mid-year budget change.

The revenues from any fines associated with Part III matters are already included in revenues received by POA Court Services. As such there would be no additional revenue associated with this transfer. The transfer is essentially a download of prosecution services from the Province to the Region. The transfer would eliminate the existing budgeted expense of the hourly fee of \$109/hour for the Crown Prosecutor. However, the Crown's office presently utilizes 2 FTEs to support these prosecutions and current fees do not include time spent in appeals court, time spent in Judicial Pre-Trials (JPT), or any out of court time; file preparation, trial preparation, pre-trials, etc. which would need to be completed by Staff upon transfer. The Crown's office also utilizes two articling students per year, as well as two additional law students every summer to assist with POA Part III prosecution and administration, which are also not included in these current fees.

### **Risk Assessment Description:**

The transfer of these prosecutions could not be successfully absorbed with existing FTEs based on the significant workload increase in terms of case numbers and case complexity. The transfer at this time is voluntary, therefore staff would not proceed to take on this transfer absent additional staffing resources in the event that this business case is not approved; however failing to proceed would be a lost opportunity to realize efficiencies in court time and improvements in customer service.

Should the Region not opt into the voluntary transfer, there is no known immediate financial impact based on information currently available. Court Services has continued to have ongoing communication with the local Crown Attorney and is aware that there is potential for a significant increase in fees charged to municipalities to reflect actual cost recovery. It is also possible that the Province may make the transfer mandatory at a later date, potentially resulting in unplanned mid-year budget impact and/or decreased flexibility in terms of start date based on site readiness (and resulting operational pressures of implementation). However, to date, there has not been any formal communication regarding pending changes to the fees paid to the Province for prosecution, or regarding mandatory transfer of Part III Prosecutions from the Province.

## Financial and Staffing Impacts

<b>Object of Expenditure</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
Labour Related Costs	\$251,990	\$256,429	\$267,629
Administrative	(42,000)	(42,816)	(43,648)
Operational & Supply	(107,995)	(107,306)	(113,025)
Occupancy & Infrastructure	-	-	-
Equipment, Vehicles, Technology	7,000	1,000	1,020
Community Assistance	-	-	-
Financial Expenditures	-	-	-
Transfer to Reserve	-	-	-
<b>Gross Expenditures</b>	<b>\$108,995</b>	<b>\$107,307</b>	<b>\$113,026</b>
Other Revenue	-	-	-
Federal and Provincial Grants	-	-	-
By-Law Charges & Sales	-	-	-
Transfer from Reserve	-	-	-
<b>Gross Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Impact</b>	<b>\$108,995</b>	<b>\$107,307</b>	<b>\$113,026</b>
Permanent FTEs	2.0	2.0	2.0
Temporary FTEs	-	-	-

*\*total annual budget impact*

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