

Initiation of the Provincial Offences Court Transfer

(City Council on April 11, 12 and 13, 2000, amended this Clause by adding thereto the following:

“It is further recommended that:

- (1) the City Solicitor be requested to submit a detailed report to the Administration Committee on the obligations of Councillors under the Provincial Offences Act; and*
- (2) City Council support, in principle, a model that promotes service delivery on a decentralized basis, and that consideration be given to improving accessibility to First Appearance Facilities through the eventual service model.”)*

The Administration Committee:

- (1) recommends the adoption of the confidential report (February 14, 2000) from the Provincial Offences Act Transfer Task Force, entitled “Initiation of the Provincial Offences Court Transfer”, which was forwarded to Members of Council under confidential cover; and further that, in accordance with the Municipal Act, discussions pertaining to the aforementioned report be held in camera, having regard that portions of the aforementioned report deals with labour relations issues; and**
- (2) reports having received the following report (March 9, 2000) from the Chief Administrative Officer, entitled “Background on Provincial Offences Act (POA) Transfer”:**

Purpose:

To summarize the key aspects of the Provincial Offences Act Transfer and the potential impact on the City.

Financial Implications and Impact Statement :

If the City accepts responsibility for the prosecution and administration responsibilities for provincial offences courts, it will be entitled to retain all fine revenue net of expenses, dedicated fines, victim fine surcharges and the Province’s costs for the judiciary and prosecution of more serious offences.

The Ministry of the Attorney General estimates this net revenue to be approximately \$13.9 million per year. However, a review of the implications of the transfer suggests that the actual amount will be less because the Ministry has underestimated the staffing and facility costs to be borne by the municipality.

Recommendation:

It is recommended that this report be received for information.

Background:

As part of its Local Services Realignment (LSR) exercise, the province is transferring responsibility for the administration of provincial offences courts and the prosecution of the majority of provincial offences to municipalities. Before accepting the additional responsibilities, City Council has established the Provincial Offences Act Transfer Task Force to examine the implications of doing so.

A report from the Task Force transmitting a confidential report from the Chief Administrative Officer is also before the committee for consideration. This report provides a summary of the project.

Comments:

Summary of the Transfer Project:

Under the Provincial Offences Act Transfer, the City would become responsible for the administration of provincial offences courts and the prosecution of the majority of provincial offences in Toronto. In return, the City is entitled to retain fine revenues net of various provincial costs and municipal expenses.

The transfer of provincial offences courts is permitted under 1998 amendments to the POA. The transfer is optional under Part X of the *Provincial Offences Act*. However, the Province has announced its intention to transfer all POA courts to municipalities no later than March 15, 2001. If the City were to decline to accept the POA courts, it is likely that the Province would make the necessary legislative changes to require the City to accept them. If this were to occur, the City risks losing the right to negotiate the terms of the transfer.

Provincial offences include contraventions of a range of provincial statutes and municipal by-laws. Provincial offences do not include criminal offences. More than 80 percent of charges filed under the POA are *Highway Traffic Act* offences. The Toronto Police Service files more than 90 percent of the charges. More than 450,000 POA charges were filed in Toronto in 1997-98 with nearly 4 out of every ten resulting in a trial. Toronto accounts for 30 percent of all such offences in Ontario.

Parts I, II and III of the POA differentiate between the processes used to lay charges (a more detailed summary is attached as Appendix No. 1):

- Part I is used to issue tickets that provide the option of payment out of court or a request for a trial. Fines are set and the maximum set fine is \$500.

- Part II offences are parking infractions.
- Part III is normally used for more serious offences. Charges under Part III require a court appearance. Fines are variable, the maximum set fine is \$5,000, unless otherwise set out in legislation. Jail sentences are possible where permitted by statute.

The transfer will result in municipalities taking over responsibility for court administration and court support functions for charges laid under the POA and the prosecution of most provincial offences and federal contraventions commenced under Part I of the POA. The City already prosecutes its by-laws, including Part II parking infractions. The province will continue to prosecute the majority of Part III offences. The powers, duties, and appointment of the judiciary are not affected by the transfer and the roles and functions of enforcement agencies are not to be altered. For its efforts, the city will retain all fine revenues net of dedicated fines, victim fund surcharges and various costs recoverable by the Province.

It should be noted that the City already discharges some prosecution and court functions under the *Provincial Offences Act*; i.e., the prosecution of municipal by-laws and certain provincial statutes under Parts I, II and III (including all parking tags) and the court administration functions for parking tags.

The transfer is governed by several guiding principles:

- (i) Preservation of the independence of the judiciary;
- (ii) Maintenance of public confidence in the justice system;
- (iii) Affirmation of the tenets of procedural fairness and natural justice;
- (iv) Separation of prosecutorial functions and policing functions;
- (v) Continuation of an officially bilingual court system in Ontario, including the provision of a bilingual prosecutor when a bilingual trial is requested; and
- (vi) Continuation of a justice process that operates independently and free from political intervention.

The province estimates the City could collect gross fine revenues of \$26 million, set off by \$12.1 million in administration, judicial and prosecution expenses. This would leave the City with \$13.9 million in net revenues.

Implications of the Transfer:

The provincial offences courts in Toronto are labouring under a large and unacceptable backlog of cases due to (a) a shortage of justices of the peace to conduct trials and (b) a shortage of courtrooms devoted to provincial offences matters. The Attorney General has not allocated enough judicial resources in Toronto to keep pace with the volume of charges. Moreover, with the introduction of red light cameras, enforcement blitzes such as the public health crackdown on restaurants, the Community Action Policing program and other initiatives, the number of charges filed will likely increase and the POA courts can be expected to fall further behind.

The backlog is evident in the time it takes a trial to be scheduled. The average time between a trial request and the trial date is 10 to 12 months in Toronto POA courts, reaching as high as 15 months at the Scarborough courthouse. By comparison, parking tag trials scheduled by the City's parking tag operations are normally scheduled within three to twelve weeks.

The backlog is problematic for three reasons. First, it interferes with an accused's constitutional right to a trial within a reasonable time. Second, it leads to a large number of charges being withdrawn to comply with decisions of the Supreme Court of Canada in the *Askov* case and subsequent cases, which have attempted to quantify the right to trial within a reasonable time. The backlog leads to other charges being withdrawn because the officer fails to attend court. Justice is not served when charges are withdrawn; moreover, fine revenue is foregone. The third reason stems from the second: public perception, fuelled by the media, word of mouth, and legal and paralegal firms, that convictions can be avoided by requesting a trial, with hopes of a successful *Askov* defence or that the officer will fail to appear. This only compounds the problem, since for every such trial requested, the scheduling delays get longer, and court expenses increase.

In addition to the backlog, there are several areas of concern, including the following:

- (i) There is a serious shortage of justices of the peace available to conduct POA trials, something over which the City has no control. This is the biggest obstacle to reducing the backlogs and improving the efficiency of POA courts. The task force has identified obtaining an adequate supply of JP's as the primary goal of the City's discussions with the Attorney General.
- (ii) Even if there were enough JPs, there are not enough courtrooms dedicated to POA matters. At present POA trials are held in 19.5 courtrooms across the City while the current case load warrants as many as 26 courtrooms. To do the job right, the City will need to expand the number of courtrooms (on the assumption that it can secure enough JPs to conduct trials).
- (iii) Of the four POA courts in Toronto, the City will need to replace the capacity of two of them. The province is not prepared to transfer the POA facilities at 47 Sheppard Avenue East or 1911 Eglinton Avenue East, preferring instead to expand criminal, family and civil courts at those locations. Although this imposes additional costs on the City, this also presents an opportunity to reorganize the courthouses. Accordingly, a study of the

City's facility options is currently underway and will be the subject of a future report to the Administration Committee.

- (iv) The two remaining facilities—Old City Hall and 2265 Keele Street—fall short of the Attorney General's standards for courthouses, to which the City is expected to adhere. In particular, neither facility provides for separation of the judiciary from defendants, raising security concerns.
- (v) The province is requiring the City to use the more expensive and as yet undeveloped "Integrated Justice Project" (IJP) to manage its new responsibilities. Based on the estimates for IJP provided to the City to date, it would be far cheaper and less onerous to upgrade the City's Parking Tag Management System.
- (vi) In its financial estimates, the province has underestimated the number of staff that will be required to administer the transferred functions. While the province estimates just over 100 FTE's are required, it would appear that the City would need to increase its staffing complement by as much as 150 FTE's. This is consistent with the experience of several other municipalities that have completed the transfer, where the province's numbers were as much as 50 percent underestimated.
- (vii) The province's record keeping practices are well below standard practice, and the City stands to inherit a large volume of unorganized active and inactive records.
- (viii) While no details have yet been provided, there appear to be a substantial number of uncollected fines.

Notwithstanding the foregoing, there are several opportunities for improvement to the courts when under municipal control:

- (i) There appear to be opportunities to better organize the scheduling of courts to make the best use of the time of police and other enforcement officers, prosecutors and the courtrooms.
- (ii) The use of the City's superior information technology would streamline the trial scheduling process. For example, the City's system automatically schedules trials in batches while the province currently schedules each trial individually by hand.
- (iii) The City will be better able to maximize on-duty appearances by police officers. At present, there is no incentive for provincial prosecutors to cooperate with the police service in selecting dates for remands, adjournments and other court dates to ensure the officer who laid the charge is on duty. With the majority of the prosecutors under City control, there should be greater cooperation in this regard.
- (iv) The application of the City's record keeping practices promises to introduce efficiencies to the storage and management of court documents.

- (v) The combination of recent and forthcoming changes to the legislation affecting electronic documents, commerce and evidence may allow the City to modernize a paper-based court system and introduce efficiencies and improved customer services.

From a financial point of view, the foregoing likely means that the City may fall short of the \$13.9 million in net revenues estimated by the Attorney General by as much as \$5 to \$6 million in the first few years, primarily because the Attorney General has underestimated the facility and staffing costs to be borne by the City.

However, the financial scope of the program can be improved by pursuing a number of strategies, including the following:

- (i) Reducing the trial request rate;
- (ii) Reducing the time it takes a charge to come to trial;
- (iii) Reducing the backlog of cases;
- (iv) Improving the fine collection rate;
- (v) Increasing officer attendance in court through better scheduling; and
- (vi) Reversing public perceptions about the chances of beating a charge by filing frivolous trial requests.

Conclusions:

The City stands to inherit an under-resourced provincial offences court system under the POA Transfer, with significant facilities, human resource, information technology and financial implications for the City. The single largest obstacle to improving the POA courts is the shortage of justices of peace for POA matters. If the City is successful in obtaining the right number of JP's, there are several strategies which, if successfully pursued, could lead to greater efficiency, improvements in the administration of justice, and increased net revenues.

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Attachment:

Appendix No. 1 – Summary of Parts I, II and III of the *Provincial Offences Act*

Appendix No. 1 – Summary of Parts I, II and III of the *Provincial Offences Act*

A. Key features of Parts I to III

	Part I	Part II	Part III
Examples of offences	<p>Municipal bylaws</p> <ul style="list-style-type: none"> Noise, lot maintenance etc. (excludes parking) <p>Provincial Statutes</p> <ul style="list-style-type: none"> Highway Traffic Act Liquor Control Act Trespass to Property Act <p>Federal Statute</p> <ul style="list-style-type: none"> Contraventions Act 	<ul style="list-style-type: none"> Municipal parking infractions only 	<p>Municipal bylaws</p> <ul style="list-style-type: none"> Noise, prohibited turns etc. including parking <p>Provincial Statutes</p> <ul style="list-style-type: none"> Highway Traffic Act Liquor Control Act Trespass to Property Act <p>Federal Statute</p> <ul style="list-style-type: none"> Contraventions Act
Charging document	<p>Certificate of Offence (ticket)</p> <ul style="list-style-type: none"> Issued by Provincial Offences Officer Personal Service Service within 30 days of the offence date Filed in court within 7 days of service date Set fine approval 	<p>Certificate of Parking Infraction</p> <ul style="list-style-type: none"> Issued by Provincial Offences Officer served at time of infraction by affixing to vehicle Set fine approval Filed in court within 75 days of infraction date 	<p>Information</p> <ul style="list-style-type: none"> Charge laid by any person Laid within 6 months Sworn before a JP Served personally
Defendant Options	<p>Offence Notice Within 15 days:</p> <ul style="list-style-type: none"> plead guilty with an explanation before justice of the peace pay out of court settlement Request a trial <p>Summons</p> <ul style="list-style-type: none"> no option but to appear in court to plead guilty or set a date for trial 	<p>Parking Infraction Notice: Within 15 days</p> <ul style="list-style-type: none"> pay out of court settlement file a request for trial dispute resolution <p>Notice of Impending Conviction (NIC): By the due date</p> <ul style="list-style-type: none"> pay out of court settlement file a request for trial dispute resolution 	<p>Summons</p> <ul style="list-style-type: none"> no option but to appear in court to plead guilty or set a date for trial
Trial	<p>Offence Notice:</p> <ul style="list-style-type: none"> Where defendant fails to appear - deemed not to dispute & automatic conviction imposed set fine, plus victim fine surcharge (VFS), and may include costs. \$500 maximum fine at trial <p>Summons:</p> <ul style="list-style-type: none"> Where defendant fails to appear - ex parte trial conducted \$500 maximum fine, plus VFS may include costs 	<ul style="list-style-type: none"> Where defendant fails to appear – deemed not to dispute & automatic conviction imposed: set fine plus court costs (\$12.75) \$200 maximum fine at trial 	<p>Where defendant fails to appear:</p> <ul style="list-style-type: none"> ex parte trial conducted Maximum fine of \$5,000 unless otherwise set by statute; VFS and costs may be added Permit, licence suspension etc where authorized by statute Imprisonment where authorized by statute Probation order (except absolute liability offences)
Fail to Respond	<p>Offence Notice</p> <ul style="list-style-type: none"> Deemed not to dispute – visual review of the document by JP, automatic conviction set fine, court costs & victim fine surcharge (VFS) 	<p>Notice of Impending Conviction (NIC):</p> <ul style="list-style-type: none"> Deemed not to dispute – CRC (Certificate Requesting Conviction) filed with the court. Conviction registered by Clerk of the Court: set fine plus \$16 in costs added 	n.a.
Collections options	<ul style="list-style-type: none"> Driver licence suspension Civil Enforcement Collection Agencies 	<ul style="list-style-type: none"> Plate Denial Civil Enforcement 	<ul style="list-style-type: none"> Suspension of licence / permit etc Plate Denial Civil Enforcement Collection agencies

B. Summary of Changes under the Transfer (italics denote a change in responsibility)

Type of Offence	Function	Part I		Part II		Part III	
		Now	Post Transfer	Now	Post Transfer	Now	Post Transfer
Municipal Offence	Administration	<i>Province</i>	<i>City</i>	City	City	<i>Province</i>	<i>City</i>
	Court Support	<i>Province</i>	<i>City</i>	<i>Province</i>	<i>City</i>	<i>Province</i>	<i>City</i>
	Prosecution	City	City	City	City	City	City
Provincial Offence	Administration	<i>Province</i>	<i>City</i>	n.a.	n.a.	<i>Province</i>	<i>City</i>
	Court Support	<i>Province</i>	<i>City</i>	n.a.	n.a.	<i>Province</i>	<i>City</i>
	Prosecution	<i>Province</i>	<i>City</i>	n.a.	n.a.	Province	Province
Federal Contravention	Administration	<i>Province</i>	<i>City</i>	n.a.	n.a.	<i>Province</i>	<i>City</i>
	Court Support	<i>Province</i>	<i>City</i>	n.a.	n.a.	<i>Province</i>	<i>City</i>
	Prosecution	<i>Province</i>	<i>City</i>	n.a.	n.a.	Province	Province

Mr. John Elvidge, Senior Corporate Policy and Management Consultant, Chief Administrative Officer's Department, gave a presentation to the Administration Committee in connection with the foregoing matter and filed a copy of his presentation material.

(City Council on April 11, 12 and 13, 2000, had before it, during consideration of the foregoing Clause the following communication (March 28, 2000) from the City Clerk:

The Administration Committee at its meeting on March 21, 2000, gave consideration to a confidential report (February 6, 2000) from the Chief Administrative Officer respecting the Initiation of the Provincial Offences Court Transfer; and directed that a public version thereof be distributed to all Members of Council.

Background:

The Administration Committee at its meeting on March 21, 2000, had before it a confidential report (February 14, 2000) from the Provincial Offences Act Transfer Task Force attaching a confidential report (February 6, 2000) from the Chief Administrative Officer forwarding recommendations respecting the Initiation of the Provincial Offences Court Transfer.

Mr. John Elvidge, Senior Corporate Policy and Management Consultant, Chief Administrative Officer's Department, gave a presentation to the Administration Committee in connection with the foregoing matter and filed a copy of his presentation material.)

(City Council also had before it, during consideration of the foregoing Clause, the following confidential report (February 14, 2000) from the Provincial Offences Act Transfer Task Force, such report now public in its entirety:

At its meeting of February 14, 2000, the Provincial Offences Act Transfer Task Force considered a confidential report from the Chief Administrative Officer headed "Initiation of the POA Transfer" recommending the CAO be authorized to submit a letter of intent to the Ministry of the Attorney General to undertake the court administration, court support and prosecution functions under Part X of the Provincial Offences Act.

The Task Force:

- (1) recommends the adoption of the report (February 6, 2000) from the Chief Administrative Officer, subject to the following amendments to Appendix No. (3). 'City of Toronto Conflict of Interest Guidelines for Members of Council and Employees in Relation to the Administration of the Provincial Offences Courts':
 - (a) the status of the document be changed from 'guidelines' to "standards";*
 - (b) as far as possible, clause (1.0)(i) be clarified to state the fundamental tenets of procedural fairness and natural justice; and*
 - (c) the remainder of the standards be revised in light of the task force's suggestion that the term "conflict of interest" be amended to read "conflict of duty";**
- (2) recommends the final draft of the letter of intent be in accordance with the principles set out in the report and be subject to the review and approval by the POA Transfer Task Force;*
- (3) recommends the letter of intent state that the City of Toronto requires its own dedicated judiciary and that the City's first preference would be that the Province delegate the nomination and appointment authority to the City of Toronto for justices of the peace within the City of Toronto;*
- (4) recommends the Province review, in the context of the POA Transfer, the possibility of requiring the prosecution of more serious offences such as those under the Occupational Health and Safety Act to be heard by a Provincial Court Judge, not a justice of the peace;*
- (5) requested the Chief Administrative Officer to report to the task force on a recommended approach to facilities, including a centralized model, a centralized model with decentralized store fronts (together with any necessary legislative changes) and a decentralized, four-courthouse model;*

- (6) *requested the Chief Administrative Officer to report to the task force on the governance models available to meet the Provincial requirements to separate enforcement, prosecution, court administration and finance, including a review of the various agency models available; and*
- (7) *referred the draft standards contained in Appendix No. (3), as revised by the foregoing recommendations, to the Ethics Steering Committee for information, and with a request that the Committee review the issue of sanction for their breach.)*

(City Council also had before it, during consideration of the foregoing Clause, a confidential report (February 6, 2000) from the Chief Administrative Officer, such report to remain confidential in accordance with the provisions of the Municipal Act, given that it pertains to labour relations, save and except the following recommendations and extract embodied therein:

*(Extract from confidential report dated February 6, 2000,
from the Chief Administrative Officer
addressed to the Provincial Offences Act Transfer Task Force,
entitled "Initiation of the Provincial Offences Act Transfer")*

Purpose:

To report on the implications of the POA Transfer Project and to seek authority for the CAO to submit a letter of intent to the Ministry of the Attorney General to proceed with the transfer.

Financial Implications and Impact Statement:

If the City accepts responsibility for the prosecution and administration responsibilities for provincial offences courts, it will be entitled to retain all fine revenue net of expenses, dedicated fines, victim fine surcharges and the Province's costs for the judiciary and prosecution of more serious offences.

The Ministry of the Attorney General estimates this net revenue to be approximately \$13 million per year. However, a review of the implications of the transfer suggests that the actual amount will be less because the Ministry has underestimated the staffing and facility costs to be borne by the municipality.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) *the Chief Administrative Officer be authorized to submit to the Ministry of the Attorney General a letter of intent to undertake the court administration, court support and*

prosecution functions for provincial offences under Part X of the Provincial Offences Act, in a form satisfactory to the City Solicitor;

- (2) *the letter of intent set out the following issues for negotiation:*
 - (a) *the provision of an adequate supply of justices of the peace to handle the large volume of cases in the Toronto POA courts;*
 - (b) *the City receive compensation for its costs associated with replacing the Scarborough and North York POA court facilities;*
 - (c) *the City expand its existing parking tag management system to handle Part I and Part III offences, in lieu of using the Province's current or forthcoming systems;*
 - (d) *the Province accept responsibility for reducing the backlog of cases before the POA courts, either by taking the necessary steps before the transfer, or by providing adequate funds to the City to do so following the transfer;*
 - (e) *the Province retain all inactive records, i.e., those records that qualify for destruction under the Ministry's prevailing record retention policies;*
- (3) *as evidence of its compliance with the requirement to develop conflict of interest guidelines with respect to justice administration, the CAO submit (a) Code of Conduct for Members of Council, as approved by Council in 1999, and (b) the proposed conflict of interest guidelines for members of council, staff and agents as presented in Appendix No. (3);*
- (4) *the Association of Municipalities of Ontario be asked to give consideration to the issues outlined in this report through its POA streamlining task force; and*
- (5) *the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.*

Background:

At its meeting of April 13, 14 and 15, 1999, City Council established a task force to examine the implications inherent in the POA Transfer and directed that no further steps be taken by staff until the proposed Task Force has had an opportunity to consider this matter. Councillors David Miller, Norm Gardner and John Adams were appointed to the task force. The Chief Administrative Officer was directed to assist the task force in its deliberations.

Supported by a staff working group with representation from the CAO, Finance, Legal Services, Facilities and Real Estate, Records and Archives, Human Resources, Information and Technology and the Police Service, the task force has reviewed the key aspects of the transfer project. The task force has met with representatives of the Ministry of the Attorney General, staff

from the Region of York (where the transfer has already taken place) and facility consultants engaged by the CAO to evaluate the impact of the transfer on the City's real estate program.

There are three appendices to this report: Appendix No. (1) summarizes the major provisions of Parts I, II and III of the Provincial Offences Act; Appendix No. (2) describes municipal obligations under the transfer agreement; and Appendix No. (3) contains draft conflict of interest guidelines to be submitted with the letter of intent.

Comments:

1. Background to the POA Transfer:

The Provincial Offences Act (POA) is a procedural law for the administration and prosecution of provincial offences, including offences created under municipal bylaws and minor federal offences designated as contraventions. Examples of provincial statutes that fall under the POA include the Highway Traffic Act, the Compulsory Automobile Insurance Act, the Trespass to Property Act, the Environmental Protection Act, the Liquor Licence Act and the Safe Streets Act.

Parts I, II and III of the POA differentiate between the processes used to lay charges (a more detailed summary is attached as Appendix No. 1):

- Part I is used to issue tickets that provide the option of payment out of court or a request for a trial. Fines are set and the maximum set fine is \$500.*
- Part II offences are parking infractions.*
- Part III is normally used for more serious offences. Charges under Part III require a court appearance. Fines are variable, the maximum set fine is \$5,000, unless otherwise set out in legislation. Jail sentences are possible where permitted by statute.*

As part of the Province's Local Services Realignment (LSR) initiative, it is seeking to transfer the administrative and selected prosecutorial responsibilities under the POA to municipalities. The transfer will result in municipalities taking over responsibility for court administration and court support functions for charges laid under the POA and the prosecution of most provincial offences and federal contraventions commenced under Part I of the POA. The City already prosecutes all Part II parking infractions relating to City by-laws. The province will continue to prosecute Part III offences. The powers, duties, and appointment of the judiciary are not affected by the transfer and the roles and functions of enforcement agencies are not to be altered. For its efforts, the city will retain all fine revenues net of dedicated fines, victim fund surcharges and various costs recoverable by the Province. The transfer is permitted under 1998 amendments to the POA.

It should be noted that the City already discharges some prosecution and court functions under the Provincial Offences Act; i.e., the prosecution of municipal by-laws and certain provincial statutes under Parts I, II and III (including all parking tags) and the court administration functions for parking tags.

The transfer is governed by several guiding principles:

- *Preservation of the independence of the judiciary;*
- *Maintenance of public confidence in the justice system;*
- *Affirmation of the tenets of procedural fairness and natural justice;*
- *Separation of prosecutorial functions and policing functions;*
- *Continuation of an officially bilingual court system in Ontario, including the provision of a bilingual prosecutor when a bilingual trial is requested; and*
- *Continuation of a justice process that operates independently and free from political intervention.*

The transfer is to be initiated by the City submitting a letter of intent. Following a period of negotiation and the development of transition plans, the city and province are to enter into a transfer agreement. The two-part agreement comprises a standard Memorandum of Understanding (MOU) that has been developed for province-wide use, and a Local Side Agreement (LSA) governing facility, human resource and other local issues. It is expected that nine to twelve months are required between the submission of the letter of intent and the transfer of responsibilities.

The municipality's obligations under the MOU are numerous, and are summarized in Appendix No. (1) to this report.

While the POA does not require the City to take over these responsibilities, the Province has stated its intent to transfer all POA courts to municipalities by March 15, 2001. The Act only provides for the transfer of these functions to municipalities. If the City were to decline to accept the transfer and the Province carries through on its plan to transfer all POA courts, the Province is limited to seeking another municipality to take over the Toronto POA courts or using its legislative authority to require the City to accept the transfer.

2. Case Load:

In 1997-98 there were approximately 453,000 Part I and Part III charges laid in Toronto and can be broken down as follows:

- *Type of charge: Part I, i.e., tickets or summons (86 percent), Part III, normally reserved for more serious offences (14 percent)*
- *Agencies laying the charges: Toronto Police Service (89 percent), Ontario Provincial Police (7 percent), Municipal Bylaw Enforcement Officers (3 percent) and other agencies (1 percent).*
- *Type of infraction: Traffic infractions (82 percent), Liquor infractions (2 percent), Municipal By-laws (4 percent) and other provincial statutes (12 percent)*
- *Where charges are received: Old City Hall (37 percent), Keele Street (27 percent), Scarborough (21 percent), North York (14 percent)*

Some other key Toronto statistics include the following:

- *The number of Part I and Part III charges in 1997-98 were up 110,243 or 32 percent from the previous year, and 69 percent from the year before that.*
- *Toronto accounts for 30 percent of all POA charges in Ontario, compared to less than 25 percent of the population.*
- *The in-court disposition rate for Part I offences (i.e., the rate at which defendants request a trial rather than pleading guilty and paying the fine) is 33 percent. This is markedly higher than the experience in other parts of the province and can be attributed in large part to the public perception that there is a good chance the charges will be withdrawn because of delays or officers failing to appear in court.*

The City is already responsible for the administration and prosecution of parking tags under Part II of the POA. Parking tags differ significantly from Part I tickets in that the charge is not filed by the City and proceedings commenced until 75 days following tag issuance. During this period, the defendant may avoid court proceedings by paying the ticket or disputing it before a civilian at a first appearance facility. In contrast, under Part I the certificate of offence must be filed within seven days of the ticket being served. Paying a ticket is a guilty plea to the charge; the only way to dispute the charge is to request a trial. In 1998 there were 2.6 million parking tags issued. Of those, 645,501 resulted in charges being filed in court under Part II. There were 60,795 trials, giving an in-court disposition rate of 2.2 percent of tags issued and 9.4 percent of charges filed. Toronto accounts for 60 percent to 70 percent of all charges under Part II.

It should be noted that there will be considerable upward pressure on the caseload in the coming years. The most significant factor will be the introduction of the red-light camera pilot project in 2000. The project is expected to generate charges at the rate of 80,000 per annum to begin, dropping to a rate of 40,000 to 50,000 per annum as public awareness grows. This represents a 10 percent to 20 percent increase in the caseload. The trial request rate is not yet known, but estimated to be in the 20 percent to 30 percent range. Other initiatives that may increase the caseload are the Community Action Policing initiative, enforcement of the Safe Streets Act and any other enforcement blitzes under provincial statutes or municipal by-laws.

3. The Case Backlog

The increase in caseload in recent years has been accompanied by an unacceptable increase in a case backlog. Backlog can be defined in at least two ways. One measure is the number of trials that, having been requested, are awaiting scheduling. The Ministry has not disclosed these statistics formally, but there are indications there are thousands of such cases. Another measure of the backlog is the time between requesting trial and the trial date. In Toronto this averages ten to twelve months, with waits of up to 15 months at the Scarborough courthouse. By comparison, parking tag trials scheduled by the City's parking tag operations are normally scheduled within three to twelve weeks.

The backlog is problematic for three reasons. First, it interferes with an accused's constitutional right to a trial within a reasonable time. Second, it leads to a large number of charges being withdrawn to comply with decisions of the Supreme Court of Canada in the Askov case and subsequent cases which have attempted to quantify the right to trial within a reasonable time. It

leads to other charges being withdrawn because the officer fails to attend court. Justice is not served when charges are withdrawn; moreover, fine revenue is foregone. The third reason stems from the second: public perception, fuelled by the media, word of mouth and the legal and paralegal firms, that conviction can be avoided by requesting a trial with hopes of an Ascov defence or that the officer will fail to appear. This only compounds the problem, since for every such trial requested, the scheduling delays get longer, and court expenses increase.

The main reason there is a backlog is the shortage of justices of the peace (JP's) to hear POA matters. There is a complement of fifty JP's for Toronto courts, although eight vacancies have remained unfilled for some time. JP's split their time between POA and criminal court. Not surprisingly, when it comes to scheduling their time, criminal duties are seen as more important, and POA matters have the lowest priority.

Justices of the peace are governed by the Justices of the Peace Act and are appointed by cabinet on the recommendation of the Attorney General. The Attorney General's nominations are based on the recommendations of the Associate Chief Justice responsible for JP's and the Justices of the Peace Review Council. The appointment of additional JP's is on hold pending a report of a judicial committee on the remuneration of JP's later this summer. A recommendation to increase JP's pay would result in increased costs to the City. It may also recommend doing away with part-time JP's in favour of a full-time bench; this could lead to the judiciary effectively eliminating night court, where the number of concurrent sessions requires the use of part-time JP's.

It is recommended that the City seeks assurances that an adequate number of justices of the peace be made available for the Toronto POA courts. This is essential for the City to meet its commitment to uphold the right to trial within a reasonable time. It is also essential to stem the growing backlog and resulting loss of revenue. In addition, it is also recommended that the City raise this issue on a provincial basis through the recently established task force of the Association of Municipalities of Ontario.

4. Facilities

Another principal contributor to the backlog is the shortage of courtrooms available to hear POA matters. In other words, even if there were enough JP's to keep pace with the caseload, there would not be enough physical courtrooms to schedule trials. At present there are 19.5 court rooms devoted to POA matters in the four Toronto courthouses including the temporary "blitz" (i.e., backlog reduction) courts. The existing case load however, merits 26 court rooms, not including space needed to conduct blitz courts to reduce the backlog.

There are four POA courthouses in Toronto: Old City Hall, 47 Sheppard Avenue East, 1911 Eglinton Avenue East, and 2265 Keele Street. The Keele Street Courthouse is dedicated to POA offences, while the other three are in facilities that also hear criminal or other matters. The Ministry has indicated that the Sheppard and Eglinton facilities are not subject to the transfer as they intend to expand non-POA court functions in those buildings.

Given the need to replace these court facilities, the CAO engaged the IBI Group to study the City's facility options. IBI studied variations of two models: a decentralized model consisting of a large downtown courthouse plus three satellites and a centralized court house.

Based on its consultation with staff and the judiciary, IBI narrowed the options down to variations on two basic models: a four-location decentralized court model, and a single, centralized court facility. The options considered were:

- (i) Keep Keele Street and Old City Hall and;
 - (a) lease two other facilities (north and east);*
 - (b) build two other facilities (north and east);**

- (ii) Keep Old City Hall and;
 - (a) lease three other facilities (north, east and west);*
 - (b) build three other facilities (north, east and west);**

- (iii) Replace all four facilities;
 - (a) by leasing all four facilities;*
 - (b) by leasing the downtown facility and building the other three (north, east, west);**

- (iv) Providing one major court facility:
 - (a) using Old City Hall (treat as leased space);*
 - (b) using Metro Hall (treat as leased space);*
 - (c) leasing a new downtown facility; and*
 - (d) leasing a new uptown (North York) facility.**

The IBI study reaches the following conclusions:

- (i) the decentralized model is less efficient, requiring 25 percent more staff and 28 percent more space;*

- (ii) replacing all four facilities in the decentralized model (instead of using Old City Hall and Keele Street) is more economic because of the high costs of renovating existing facilities and the additional space needed due to the inefficient plan geometry of Old City Hall*

- (iii) Using Old City Hall for a central facility is by far the most costly option because of the inefficiency of the building for court purposes and the need for renovations. Metro Hall presents some of the same problems, although to a lesser degree. Both options are more costly than the other options involving leasing office buildings with space ready to accept tenant improvements.*

- (iv) Leasing a central facility in North York is the least costly because of the lower rents as compared to those in central Toronto.*

- (v) *the decentralized model will have annual costs in the range of \$3.1 million to \$4.5 million greater than the Ministry’s estimates, while the annual costs of the centralized model will be \$1.8 to \$3.9 million greater, depending on the models selected.*

The IBI study shows that the City would need to provide more space at a greater annual expense than the Ministry currently devotes to POA courts (See Table No. 1). It shows that facility costs associated with the transfer could be higher by \$1.8 to \$4.5 million (further reducing the net revenue).

*Table 1 – Summary of Space Needs and Annual Facility Costs
Source: IBI Group: POA Facility Needs Assessment*

	<i>MAG Estimate</i>	<i>IBI Centralized Court House</i>	<i>IBI Four Court Houses</i>
<i>Net space—i.e., program space (sq. ft.)</i>	45,000	62,000	79,200
<i>Gross space (sq. ft.)</i>	<i>Ministry did not provide. A rough estimate could be as much as 80,000 sq. ft.</i>	105,000	134,000
<i>Annual costs (\$000)</i>	1,458 <i>(based on net space only)</i>	3,200 to 5,358	4,558 to 5,958

There are several reasons for the difference in space needs and costs. First, the city estimate is based on an adequate number of courtrooms—i.e. 26 as opposed to the 19.5 currently used. This reflects an assumption that the City, upon acceptance of the transfer, will take whatever steps are necessary to address the caseload and backlog. Moreover, it assumes the City will be successful in securing enough JP’s for its courts.

Second, the City is required to apply the Ministry’s prevailing architectural standards; none of the existing facilities meets these standards. The most significant is the requirement to provide private, secure circulation for the judiciary, which, at present, is only provided in the Scarborough court.

Third, the separation of POA courts from criminal and other courts leads to many inefficiencies in staffing and space needs. Chief among these is the need to duplicate chambers (i.e., offices) for justices of the peace while they are in POA courts. The ministry’s original estimate of 45,000 sq. ft did not include offices for the judiciary. However, since JP’s will continue to have both POA and criminal court duties, there is a need for chambers in both facilities. Furthermore, as is described elsewhere in this report, the Ministry has underestimated the number of staff the City will need to undertake the POA functions. IBI’s estimates are based on a larger complement of staff, thereby increasing the space needed.

The IBI study suggests there may be a financial benefit to a centralized court facility. It is the least costly option, and can be operated with fewer staff. An additional benefit is that it minimizes the number of additional court security locations to be provided by the Toronto Police Service. The drawbacks to a centralized facility include a perceived reduction in customer service and access by members of the public. A second concern is the impact on time police officers would spend travelling to and from court from outlying police divisions. Lastly, a single court facility in North York may be opposed by legal firms, which are highly concentrated in the downtown area.

Although the Province is seeking an indication of the City's facilities plans as part of the letter of intent, it is recommended that no specific plans be tabled at this time. First, there needs to be further discussions with the police, other enforcement agencies, the judiciary and others with respect to the model and location of court facilities. Second, additional time is needed to assess the city's options in light of the Office Space Consolidation Masterplan and the ongoing negotiations with the Province regarding Old City Hall.

5. Staffing numbers, transfer process and administrative structure

(a) Estimates of FTE complement:

The province estimates that 104 FTE staff are involved in the administration and prosecution of provincial offences. This number appears to be underestimated, with preliminary indications being that the City would need an additional complement of 146 FTE to manage the program effectively in a four-court model, or 119 additional FTE in a single court model. This is consistent with municipalities that have completed the transfer where actual staffing is up to two times the provincial estimate.

The gap between the two estimates is attributable to several factors:

- The province has not identified staff who are currently shared between the POA and other courts. For example, it has not accounted for a manager/supervisor of the satellite courthouses.*
- The province has not accounted for any records management staff, information technology support staff, or call centre staff, all of which the City would need to supply when POA courts are disentangled from criminal, civil and family courts.*
- The province has not accounted for finance staff that currently serve the POA courts from the Ministry's head office.*
- The province has not accounted for staff required by the City to process cheques as a result of its closure of the central fine cheque processing centre in Oshawa.*
- The formula used to calculate current prosecution FTE's is based on provincial averages and does not take into account the higher trial request rate in Toronto.*
- The province's figures reflect the current underresourcing of the POA system; the City's figures reflect the assumption that the City will assign the necessary staffing resources to manage the current caseload and backlog.*

(b) *Administrative structure*

Although the Province requires the city to propose an administrative structure that describes the “separation of justice administration, prosecutions, budgeting and revenue functions, and police administration”, it is recommended that no specific proposals be tabled at this time. Additional time is required to study the court services agency model as requested by the task force, to evaluate opportunities for combining court functions with existing operations, to give more time to consider the administrative structure following the recent hiring of new commissioners and to investigate options for combining function in the parking tag operations unit of the Finance Department.

6. *Information Technology*

At present the POA courts use the Integrated Court Offices Network (ICON) to manage Part I and Part III charges. ICON is to be replaced sometime in 2000 or 2001 by the Integrated Justice Project (IJP). IJP is a public private partnership involving the Attorney General, Solicitor General and Corrections ministries and a private consortium led by EDS Systemhouse.

The City uses the Parking Tag Management System (PTMS) to administer parking tags. Originally developed in 1989 and updated several times since, PTMS is a well-maintained, efficient system capable of handling the large volume of parking tags issued by the City. PTMS was designed with the future devolution of Part I and Part III matters in mind, and today possesses approximately 80 percent of the functionality needed to process the additional charges.

It is recommended that the City expand the PTMS system in lieu of using ICON or IJP. This would involve a one-time expenditure of approximately \$750,000 to upgrade the application. An upgrade could be completed in time for the transfer (assuming a nine to twelve month lead-up).

There are several reasons supporting this recommendation.

- Originally intended to apply to criminal, civil and family courts, IJP has only recently begun to develop a POA component. It is still in the development stage, and there are serious concerns about it being ready in time for a transfer.*
- IJP has not developed a parking tag component, meaning the City would be required to operate PTMS in parallel if it chooses to use IJP for Part I and Part III matters. The City’s goal should be one system for all POA charges.*
- The City would own an expanded PTMS system and would be able to make future customizations itself—such as financial and statistical reports—rather than working through IJ and the province-wide network of users.*
- It would be cheaper to upgrade and operate PTMS than use ICON/IJP. One-time costs associated with PTMS would be approximately \$750,000, however, based on the pricing information provided by IJ to date, annual costs of an expanded PTMS system are less than half of running two systems and are almost one-tenth of the costs of IJ processing Parts I, III and III charges.*

7. *Records management:*

Another significant aspect of the project is the transfer of all active and inactive POA records to the City. The Ministry cannot adequately describe the extent of its records holdings, does not have any measurement tools for its records, has inadequate records management standards (well below the accepted industry standards for large public and private-sector organizations), and intends to download significant clean-up costs and future liabilities to the City in relation to both physical records and electronic data. The Province has also failed to control the growth of records by not systematically destroying inactive records on a regular schedule. There are no lists of records that are in existence or that have been destroyed, which will be crucial to the City in responding to future litigation, audits or freedom of information requests for such records. Finally, our investigations have revealed that many of the records are very poorly organized for retrieval purposes, and have suffered physical deterioration from water and other environmental damage.

These issues are especially important given the current review of facilities required for records storage following amalgamation. Clearly if the Province transfers all of its active and inactive records to the City, it will affect the facility analysis that is currently underway by significantly increasing the facility costs for records storage as well as the staff resources that will be required by the City to index, retrieve, maintain and dispose of the additional records. With no statistics provided on annual accumulation of records, it will be difficult to determine the long-term requirements for storage space and handling. As the Province is not prepared to measure the extent of its records holdings and disclose this information to the City, the cost estimates for records clean-up and long-term storage cannot be prepared by City staff for the Task Force's consideration until after the transfer process has been confirmed. It also appears unlikely that the Province is willing to undertake the cost of systematically destroying inactive records and organizing the active records, prior to transfer to the City.

Moreover, under the MOU, the Province does not warrant the accuracy, completeness or integrity of the transferred records or data, but the City is expected to guarantee these standards once we assume the transfer of the Province's records and data. The MOU also indemnifies the Province from any litigation in connection with the transfer. This gives rise to a potentially significant future cost liability in data cleanup and migration, system failures, adverse audit findings or litigation involving missing or inaccurate records and data. There are also unanswered questions about negligence by the Province resulting in potential deterioration of quality in court recordings and physical evidence. If files, evidence and court recordings are not useable because of deterioration or because they are missing, the City may well lose court cases and associated fines.

It is recommended that the City refuse to accept inactive records. Regardless of whether the City is successful in negotiating this, there are several opportunities to mitigate costs by significantly improving upon the Ministry's below-standard records management practices. These include the use of space-efficient, high-density mobile shelving systems similar to those in City Hall East Tower and Metro Hall, regular records destruction practices, effective file classification controls, and regular transfer of semi-active records to lower-cost off-site records centre storage.

8. *Financial information:*

The province has estimated the City’s net revenue from POA courts to be \$13.9 million, based on gross fine revenue of \$26.1 million and expenses of \$12.1 million. However, it appears that the Ministry has underestimated the expenses in two key areas—staffing and facilities—by as much as \$2.9 million and \$3.1 million respectively. Conversely, there are potential savings of \$1 million in the use of an expanded PTMS. The province’s estimates and City staff estimates are summarized in the following table:

*Table 3 – Annual POA Revenue and Expenses:
Comparison of Provincial Estimates to Staff Analysis (\$000)*

	<i>Ministry of the Attorney General estimates May 26, 1999</i>	<i>Staff Working Group Analysis February 2000</i>	<i>Variance</i>
<i>Revenue</i>			
<i>Net Fine Revenue</i>	26,051	26,051	
<i>Expenses</i>			
<i>Court services expenses (Note 1)</i>	4,782	6,140	-2,299
<i>Computer services (Note 2)</i>	1,659	600	1,059
<i>Prosecution expenses (Note 3)</i>	1,247	1,853	-699
<i>Facility expenses (Note 4)</i>	1,458	4,600	-3,142
<i>Provincial costs (judiciary, prosecutors)</i>	<u>3,011</u>	<u>3,011</u>	
<i>Total Expenses</i>	12,157	16,204	
<i>Net Revenue</i>	13,895	9,847	-5,081

Notes:

- (1) *MAG estimate is based on estimate of 87 FTE; Staff estimate is based on 126 FTE in the four court – location model.*
- (2) *MAG estimate is based on using ICON; Staff estimate is based on using an expanded PTMS and does not include amortization of one-time upgrades of \$750,000.*
- (3) *MAG estimate is based on estimate of 17 FTE; Staff estimate is based on 21 FTE.*
- (4) *Staff estimate is based on the average of the least costly and most costly facility options identified by the IBI Group.*

The analysis of the Province’s estimate is limited in a number of respects. The gross fine revenue varies from year to year, depending on the activities of the enforcement agencies, and future revenues are therefore unpredictable. Second, the “provincial costs payable”, comprising the costs of the judiciary and provincial prosecutors for Part III offences, cannot be audited at this time.

Despite the shortfall in net revenues indicated in Table No. (3), there are reasons to believe the City can improve the net revenues in the long run. Eliminating the backlog and reducing the number of charges withdrawn due to Ascov will increase revenue. Expenses can be reduced by:

- *Reducing the trial request rate by changing public perceptions about the chances of having charges withdrawn.*
- *Improving the scheduling of prosecutors, police and others*
- *Scheduling trials in batches using an expanded PTMS (as opposed to scheduling each trial individually as is currently done)*

In short, there is reason to believe that the City will not reach the Ministry's estimate of \$13.9 million in net revenue in the short term. However, if the City is successful in reorganizing the POA courts, it is expected that net revenues should increase over the medium to long term.

9. Proceeding with the Transfer:

Notwithstanding the foregoing concerns, it is recommended that the City proceed with the transfer. First, it would appear that not proceeding with it would cause the Province to take the necessary steps to require the City to proceed. The only other alternative would be for another municipality to administer Toronto's POA courts. Second, despite the current problems in the POA courts, there is reason to believe that the system can be improved under municipal control. Several of the municipalities that have taken over POA's to date have already had success reengineering court administration. This is consistent with Metro's experience in taking over parking tags from the Attorney General in 1995; staffing and facilities were streamlined, case backlogs were reduced, better technological solutions were introduced, and customer service increased.

The recommendation to proceed with the transfer is based on the premise that the City will take the necessary steps to improve the courts. This requires that the City adopt a strategy with the following objectives:

- *secure the necessary justices of the peace;*
- *provide sufficient courtrooms to keep up with the current case volumes;*
- *reduce the back log as quickly as possible;*
- *reduce the trial request rate by eliminating unnecessary trials;*
- *revise court schedules to optimize the use of enforcement officers, prosecutors and justices of the peace;*
- *reverse the public perception that the court system can be manipulated to avoid conviction;*
and
- *improve fine collection rates.*

As a result, it is recommended that the CAO be authorized to submit, in a form satisfactory to the City Solicitor, a letter of intent to proceed with the transfer. However, given the foregoing analysis of the implications of the transfer, the letter of intent should set out several additional points for negotiation under the Local Side Agreement. These include:

- (i) Adequate supply of JP's—the transfer agreement must be premised on the adequate supply of justices of the peace to keep pace with the Toronto case volume.*
- (ii) Use of PTMS in lieu of ICON—the City intends to expand its parking tags system to handle Part I and III charges in lieu of using ICON or its replacement, IJP.*

- (iii) *Reimbursement of extraordinary facility costs—the City seeks fair compensation for replacing the Scarborough and North York facilities.*
- (iv) *Province to take responsibility for the backlog—the Province should reduce the backlog before the transfer, or provide the city with the necessary funds, over and above those needed to manage the current case load, to reduce the backlog.*
- (v) *City not to accept inactive records—Province to retain records that qualify for destruction under the Province’s records retention policy*

Under the MOU the City is required to submit conflict of interest guidelines for the transferred functions. It is recommended that council-approved Code of Conduct for members of Council be submitted. In addition, it is recommended that additional guidelines for councillors, staff and agents of the city be submitted as presented in Appendix No. (3).

Conclusions:

There are significant implications to the proposed transfer of POA court responsibilities to the City, including the need to make a substantial investment in court facilities. The net revenue the City will derive from POA courts will likely fall short of the Province’s estimate of \$13 million at first. There are some opportunities to mitigate the shortfall in the medium to long term. It is recommended the City proceed with the transfer but that a series of conditions be set out in its letter of intent.

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List of Attachments:

- 1 – Overview of Parts I, II and III of the Provincial Offences Act*
- 2 – Summary of Municipal Obligations under the Memorandum of Understanding*
- 3 – Draft Conflict of Interest Guidelines for Members of Council, Staff and Agents of the City of Toronto with respect to the administration of provincial offences*

Appendix No. 1 – Summary of Parts I, II and III of the Provincial Offences Act

A. Key features of Parts I to III

	<i>Part I</i>	<i>Part II</i>	<i>Part III</i>
<i>Examples of offences</i>	<i>Municipal bylaws</i> <ul style="list-style-type: none"> • <i>Noise, lot maintenance etc. (excludes parking)</i> <i>Provincial Statutes</i> <ul style="list-style-type: none"> • <i>Highway Traffic Act</i> • <i>Liquor Control Act</i> • <i>Trespass to Property Act</i> <i>Federal Statute</i> <ul style="list-style-type: none"> • <i>Contraventions Act</i> 	<ul style="list-style-type: none"> • <i>Municipal parking infractions only</i> 	<i>Municipal bylaws</i> <ul style="list-style-type: none"> • <i>Noise, prohibited turns etc. including parking</i> <i>Provincial Statutes</i> <ul style="list-style-type: none"> • <i>Highway Traffic Act</i> • <i>Liquor Control Act</i> • <i>Trespass to Property Act</i> <i>Federal Statute</i> <ul style="list-style-type: none"> • <i>Contraventions Act</i>

	<i>Part I</i>	<i>Part II</i>	<i>Part III</i>
<i>Charging document</i>	<p><i>Certificate of Offence (ticket)</i></p> <ul style="list-style-type: none"> Issued by Provincial Offences Officer Personal Service Service within 30 days of the offence date Filed in court within 7 days of service date Set fine approval 	<p><i>Certificate of Parking Infraction</i></p> <ul style="list-style-type: none"> Issued by Provincial Offences Officer served at time of infraction by affixing to vehicle Set fine approval Filed in court within 75 days of infraction date 	<p><i>Information</i></p> <ul style="list-style-type: none"> Charge laid by any person Laid within 6 months Sworn before a JP Served personally
<i>Defendant Options</i>	<p><i>Offence Notice</i> Within 15 days:</p> <ul style="list-style-type: none"> plead guilty with an explanation before justice of the peace pay out of court settlement Request a trial <p><i>Summons</i></p> <ul style="list-style-type: none"> no option but to appear in court to plead guilty or set a date for trial 	<p><i>Parking Infraction Notice:</i> Within 15 days</p> <ul style="list-style-type: none"> pay out of court settlement file a request for trial dispute resolution <p><i>Notice of Impending Conviction (NIC):</i> By the due date</p> <ul style="list-style-type: none"> pay out of court settlement file a request for trial dispute resolution 	<p><i>Summons</i></p> <ul style="list-style-type: none"> no option but to appear in court to plead guilty or set a date for trial
<i>Trial</i>	<p><i>Offence Notice:</i></p> <ul style="list-style-type: none"> Where defendant fails to appear - deemed not to dispute & automatic conviction imposed set fine, plus victim fine surcharge (VFS), and may include costs. \$500 maximum fine at trial <p><i>Summons:</i></p> <ul style="list-style-type: none"> Where defendant fails to appear - ex parte trial conducted \$500 maximum fine, plus VFS may include costs 	<ul style="list-style-type: none"> Where defendant fails to appear – deemed not to dispute & automatic conviction imposed: set fine plus court costs (\$12.75) \$200 maximum fine at trial 	<p>Where defendant fails to appear:</p> <ul style="list-style-type: none"> ex parte trial conducted Maximum fine of \$5,000 unless otherwise set by statute; VFS and costs may be added Permit, licence suspension etc where authorized by statute Imprisonment where authorized by statute Probation order (except absolute liability offences)
<i>Fail to Respond</i>	<p><i>Offence Notice</i></p> <ul style="list-style-type: none"> Deemed not to dispute – visual review of the document by JP, automatic conviction set fine, court costs & victim fine surcharge (VFS) 	<p><i>Notice of Impending Conviction (NIC):</i></p> <ul style="list-style-type: none"> Deemed not to dispute – CRC (Certificate Requesting Conviction) filed with the court. Conviction registered by Clerk of the Court: set fine plus \$16 in costs added 	n.a.
<i>Collections options</i>	<ul style="list-style-type: none"> Driver licence suspension Civil Enforcement Collection Agencies 	<ul style="list-style-type: none"> Plate Denial Civil Enforcement 	<ul style="list-style-type: none"> Suspension of licence / permit etc Plate Denial Civil Enforcement Collection agencies

B. Summary of Changes under the Transfer (italics denote a change in responsibility)

<i>Type of Offence</i>	<i>Function</i>	<i>Part I</i>		<i>Part II</i>		<i>Part III</i>	
		<i>Now</i>	<i>Post Transfer</i>	<i>Now</i>	<i>Post Transfer</i>	<i>Now</i>	<i>Post Transfer</i>
<i>Municipal Offence</i>	<i>Administration</i>	<i>Province</i>	<i>City</i>	<i>City</i>	<i>City</i>	<i>Province</i>	<i>City</i>

	<i>Court Support</i>	<i>Province</i>	<i>City</i>	<i>Province</i>	<i>City</i>	<i>Province</i>	<i>City</i>
	<i>Prosecution</i>	<i>City</i>	<i>City</i>	<i>City</i>	<i>City</i>	<i>City</i>	<i>City</i>
<i>Provincial Offence</i>	<i>Administration</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>City</i>
	<i>Court Support</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>City</i>
	<i>Prosecution</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>Province</i>
<i>Federal Contravention</i>	<i>Administration</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>City</i>
	<i>Court Support</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>City</i>
	<i>Prosecution</i>	<i>Province</i>	<i>City</i>	<i>n.a.</i>	<i>n.a.</i>	<i>Province</i>	<i>Province</i>

Appendix No. (2)

Summary of Municipal Obligations under the Memorandum of Understanding

The following summarises the obligations and responsibilities for the City of Toronto, as the Municipal Partner, arising from the POA Memorandum of Understanding.

Memorandum of Understanding:

1.0 General

- *All obligations relate to the functions transferred under the Transfer Agreement in the defined court service area.*
- *The MOU takes affect on the date that the Local Side Agreement is signed by the Attorney General (AG), after having been signed by the municipal partner.*
- *The Municipal Partner becomes accountable to the public, the Province of Ontario and Canada in fulfilling its responsibilities under the Transfer Agreement. The Municipal Partner must ensure that there is no discrimination under the Human Rights Code or in the performance of functions under the Transfer Agreement on the basis of place of residence.*
- *The powers, duties, and appointment of the judiciary are not affected by the Transfer, and the roles and functions of enforcement agencies are not to be altered.*
- *Guiding principles of the Transfer: independence of the judiciary preserved; confidence of the public in the justice system maintained; tenets of procedural fairness and natural justice affirmed and upheld; separation of prosecutorial functions and policing functions assured; officially bilingual court system in Ontario is continued, including the provision of a bilingual prosecutor when a bilingual trial is requested; and, the justice process shall continue to operate independently and free from political intervention.*

4.0 Interpretation

- *The Transfer Agreement shall not affect, modify or interfere with the rights, duties and responsibilities of the Attorney General or the Municipal Partner at law. In conflicts between provisions of the MOU and the law, the law shall prevail.*

5.0 *Roles and Responsibilities of the Parties*

- *The Municipal Partner shall carry out its duties and obligations in accordance with the terms and conditions of the Transfer Agreement, the Principles set out in the MOU, and in accordance with the POA and all other relevant legislation and regulations;*
- *The Municipal Partner shall:*
- *provide the same level of service delivery and the same services as are provided by the Attorney General (AG) prior to the transfer.*
- *continue to provide out-of-court services in the French language, in those areas presently provided such services by the AG, and in new areas designated under the French Language Services Act after the Transfer.*
- *provide a prosecutor who speaks French and English when a bilingual trial is requested.*
- *participate in a review of the operations process during the streamlining phase.*
- *consult with the AG prior to changes in procedural guidelines; prosecutorial, court administration or court support processes. Changes to case management procedures and court master plans require consultation with the AG and are also subject to the approval of the judiciary.*
- *establish and maintain a process for dealing with complaints to resolve day-to-day complaints at the local level.*
- *bring contentious and significant matters such as prosecutorial impropriety or misconduct, or constitutional challenges, to the attention of the AG.*
- *develop guidelines for elected officials and employees for the protection of privacy and confidentiality of private information.*
- *develop conflict of interest guidelines for elected officials and employees in accordance with the principles, responsibilities and standards set out in the Transfer Agreement. These guidelines are to be filed with the Attorney General.*
- *be responsible for the collection and enforcement of fines.*
- *The Municipal Partner may contract out services and the contractor shall be an agent of the Municipal Partner bound by the provisions of the Transfer Agreement.*

6.0 *Revenues and Costs*

- *All monies received by the Municipal Partner in respect to fines, surcharges and fees must be separated and clearly identified in its books and are subject to audit.*
- *The Municipal Partner must pay any amounts owed to the Minister of Finance for the costs incurred by the Attorney General for adjudication and prosecution and for monitoring and enforcing the Transfer Agreement. The method of calculating amounts shall be set out in the LSA.*
- *The Municipal Partner shall retain revenues.*
- *The Municipal Partner may collect, enforce and retain fines imposed prior to the execution of the Transfer Agreement.*

7.0 Access and Ownership

- *The Municipal Partner shall have access to such provincial information, data and records as the Municipal Partner may require to carry out its obligations under the Transfer Agreement.*
- *The Municipal Partner may not sell or provide to any third party any of the information or data to which it will have access after the Transfer. The Municipal Partner can not from that data create lists of personal or other information for any other purpose other than for the purpose of its obligations under the transfer agreement.*

8.0 Accounting Requirements

- *The Municipal Partner must maintain detailed and accurate accounts, records, books and data of all financial transactions undertaken pursuant to the Transfer Agreement, during the term of the Transfer Agreement and for four years following any termination of the agreement.*
- *The Municipal Partner must prepare and submit semi-annual reports to the Attorney General that include accurate accounting and reconciliation records for each court location, including data on the amount of revenue collected and the amount outstanding.*
- *The Municipal Partner shall prepare an Annual Report for the previous fiscal year on the performance of its obligations under the Transfer Agreement, to be submitted to the Attorney General.*

9.0 Audit Requirements

- *Each year that the Transfer Agreement is in effect, the Municipal Partner shall, at its own cost, prepare and submit to the Attorney General (AG) and the Minister of Finance annual audited financial statements for its fiscal year, certified by an independent public accounting firm.*
- *The Municipal Partner must make available to the AG all accounts, records, books and data related to transactions undertaken by the Municipal Partner pursuant to the Transfer Agreement.*
- *The Municipal Partner may be required to undergo a management process audit by the AG or its agents, at the discretion of the Attorney General.*
- *For the purpose of ensuring performance of the terms and conditions of the Transfer Agreement, the AG shall have direct and unrestricted access to all books, records, files, manuals, systems, and any other pertinent documentation, papers, things and property belonging to, or in use by, and to all persons employed by the Municipal Partner, or its assignees associated with or related to the Transfer Agreement, except such as may be sealed under statute or by order of court.*
- *The Provincial auditor may audit the accounts, records, books and data related to transactions undertaken by the Municipal Partner.*
- *The Municipal Partner will be responsible for the costs and expenses for audits performed by the AG where those audits report a material breach of any standard or requirement under the Transfer Agreement.*

10.0 Operational Requirements

- *The Municipal Partner must ensure to the best of its efforts the accuracy and availability of the following data: number of charges received; charge dispositions; number of trial requests; courtroom utilisation; average time from service date to trial; number of appeals and their dispositions; number of charges pending with future court date; incidence of data error; and changes to court master plans. This data must be available to the judiciary, the AG, and staff of the Government of Canada.*
- *The Municipal Partner shall keep an accurate record of the incidence and manner of resolution of disputes and complaints, conflicts of interest, breaches of ethics or law in the performance of functions under the Transfer Agreement, and financial or administrative irregularities. The Municipal Partner shall submit this information in quarterly reports to the Attorney General. The AG must be immediately advised if any matter in relation to the above may affect the proper administration of a statute, or is likely to attract substantial public interest.*
- *Notwithstanding anything else in the Transfer Agreement, the AG may request any kind of report from the Municipal Partner, and the Municipal Partner shall, to its best efforts, comply with the request.*

11.0 Confidentiality

- *This affirms that the Transfer Agreement will require the transfer of personal information between Ontario and the Municipal Partner.*

12.0 Amendments to the MOU

- *Either party may request an amendment to the MOU. Where the issue raised cannot be resolved, the AG or the municipal partner may invoke the dispute resolution mechanisms set out in the MOU.*

16.0 Insurance

- *The Municipal Partner must maintain a policy of comprehensive general liability insurance providing coverage for a limit of five million dollars per occurrence for any cause of action, and this policy must include the Attorney General as an additional insured.*

18.0 Right of Assignment

- *The Attorney General must provide consent to any assignment of responsibilities or obligations under the Transfer Agreement and such an assignment does not release the Municipal Partner of its obligations under the Transfer Agreement.*

Schedule 1 – Prosecutorial Standards

2.0 Standards

- *The Municipal Partner is responsible for ensuring that prosecutions are conducted in a manner consistent with the following principles: prosecutorial independence; fairness and impartiality; competence and integrity; and timeliness of prosecutions.*
- *Prosecutors who are not lawyers must be supervised by or report to the city solicitor or another lawyer designated for this purpose.*
- *Reporting relationships must be such that the prosecutor's exercise of discretion is not influenced by any body or person, including members of council; policing and other enforcement agencies; and municipal financial officers.*
- *The Municipal Partner is responsible for ensuring that prosecution policies are applied impartially; a fair and reasonable appeals process is in place; prosecution witnesses are notified of dates and times of hearings in accordance with legislative requirements; prosecutors are permitted to exercise their discretion in a fair and impartial manner, free from influence or bias; the continuing education of prosecutors; and the provision of fair and timely disclosure to defendants upon request.*
- *The Municipal Partner shall ensure the following: that persons employed as a prosecutor are not also employed as an enforcement officer; that a prosecutor has not held a municipal political office within the preceding 12 months; that a prosecutor shall not be placed or place him or herself in a position where the integrity of the administration of justice could be compromised; that a prosecutor shall not be counsel or solicitor for any person, in respect of any offence charged against the person, except where the LSA provides otherwise; that the Municipal Partner determine whether any perceived or actual conflicts exist as a result of charges laid against a prosecutor in respect of an offence under the Criminal Code of Canada, or any other federal or provincial act or regulation, and to take appropriate action to address identified conflicts.*
- *The Municipal Partner shall establish a procedure that ensures that no prosecutor acts in a matter where a conflict of interest has been identified.*
- *The Municipal Partner shall ensure that prosecutors are competent, and is responsible for the continuing education of municipal prosecutors to maintain competency in the field.*
- *The Municipal Partner shall ensure compliance with provincial prosecutorial directives and policies. Municipal prosecutorial policies must be consistent with provincial policies and not contrary to law.*
- *The Municipal Partner must establish a reporting protocol to notify the local Crown Attorney and the Attorney General of any matters that appear likely to raise substantive legal issues at trial or appeal.*

Schedule 2 – Operational Standards

2.0 Processes and Proceedings

- *The Municipal Partner shall provide for and accommodate the efficient processing of all court proceedings.*

- *Existing services and levels of service must be provided to enforcement agencies, including: consulting enforcement agencies about witness availability before scheduling trials; and providing necessary documentation as required.*
- *The Municipal Partner must continue to provide the language services required by the Courts of Justice Act. These include the following services: qualified interpreters for witnesses and defendants upon request, and that documents are translated for defendants upon request.*
- *Clerical support services at least equal to the level provided prior to the Transfer shall be provided to the judiciary.*
- *The accuracy of the court record for all matters transferred under the Transfer Agreement must be maintained, including: the recording of all proceedings taken before the judiciary; the preparation and certification of transcripts of proceedings; and the maintenance, retention and release of records and information relevant to the court proceedings.*
- *The accurate and timely preparation and delivery of court-related documents required to carry out a judicial order must be maintained.*
- *Compliance with record retention periods is mandatory. These retention periods include: the calendar year of the judgement plus 7 additional years for all proceedings commenced under Parts I and III where there has been an accident or a charge of careless driving, and the calendar year of the date of judgement plus 2 years in all other proceedings commenced under Parts I, II, and III.*
- *The public shall continue to be permitted to pay fines imposed in any court service area.*

3.0 *Records and Information*

- *Court records and data must be stored in a secure manner.*
- *The exchange or sharing of information shall be done in a secure manner.*
- *The Municipal Partner shall continue the current practice of providing information and access to information to all relevant provincial Ministries, enforcement agencies and others who have access at the date of transfer.*
- *The Municipal Partner must update the provincial offences database with the following information: the charges received; the status of the charge; the charge dispositions; the fine payments; and the imposition and removal of sanctions.*

4.0 *Technology*

The Municipal Partner shall use the ICON system or its replacement during the Transition Phase. The Transition Phase is defined as the period of time beginning on the date that the first Transfer Agreement is signed to the date that is 6 months following the date on which the last Transfer Agreement is signed, thereby completing the transfer of functions in all court service areas. If the Municipal Partner chooses to use a different system after the Transition Phase, it must meet the technology standards, case flow management and information sharing requirements as directed by the Attorney General, including the development of a common application environment, and the system must be Year 2000 compliant.

5.0 *Ministry of Transportation Protocols*

- *Transmission of the following information to the Ministry of Transportation is required: orders and directions to suspend or reinstate drivers' licenses; orders and directions to deny or reinstate plate permits; and convictions, in accordance with subsection 210(1) of the Highway Traffic Act.*
- *The Municipal Partner shall also ensure that the MTO will continue to have access to information relating to the status and disposition of cases.*
- *The Municipal Partner must designate a representative to work with the MTO to resolve data transmission issues.*

6.0 *Tickets and Other Court Forms*

- *Provincial offences tickets, charging and service-related documents, and other court forms and documents and other standard forms must be purchased from a single source as approved by the Attorney General.*

7.0 *Facilities*

- *Court facilities must be accessible to the public by public transit or private vehicle, and provide for barrier-free access into and within the court facilities. Sufficient parking area must be provided to accommodate the court's caseload.*
- *Minimum standards for court facilities must be maintained.*
- *Plans for major renovations to an existing facility or for a new facility require the consultation with all groups that may be affected by the change, including the judiciary, enforcement agencies, prosecution agencies, and the Attorney General.*

8.0 *Conflict of Interest*

- *An employee or other person performing duties under the Transfer Agreement shall report any attempt at improper influence or interference to the Municipal Partner and the AG. No action shall be taken against the employee or other person for making such a report in good faith.*
- *The Municipal Partner shall determine whether any perceived or actual conflicts exist as a result of charges laid against an employee or other person performing duties under the Transfer Agreement in respect of an offence under the Criminal Code of Canada, or any other federal or provincial act or regulation, and will take appropriate action to address identified conflicts.*

9.0 *Contracting Out*

A number of conditions must be satisfied where a Municipal Partner proposes to contract out services related to the Transfer. In particular, provision must be made for the withdrawal or withholding of the Attorney General's consent when there has been a breach of any term, condition or standard in the Transfer Agreement; the person or organisation performing the contract must maintain the same standards as are required of the Municipal Partner in the

Transfer Agreement; the Municipal Partner must provide an effective process to deal with complaints against the contractor and must respond to those complaints directly; and the Municipal Partner shall ensure that an effective contingency plan is in place to address any situation in which the contractor fails to comply with the terms and conditions of the Transfer Agreement.

Schedule 3 – Compliance and Performance Measures

2.0 Performance Measures

The Municipal Partner and the AG agree to exchange best practices with other Municipal Partners to promote efficiency, consistency and compliance with the Transfer Agreement, and to assist in identifying and developing methods of improving service delivery.

Schedule 4 – Existing Contracts

This schedule identifies existing contracted obligations held by the Attorney General for the provision of charging and service documents, the printing and mailing of Notices of Fine and Due Date, contracts with private collection agencies, and contracts with local court offices for the purposes of data input, technology maintenance, and courier and armoured car services. The contract terms, and options for renewal, are provided in this schedule.

Appendix No. (3)

City of Toronto Conflict of Interest Guidelines for Members of Council and Employees in Relation to Administration of the Provincial Offences Courts

Purpose:

The administration of the Provincial Offences Courts by the City of Toronto pursuant to the Transfer Agreement under Part X of the Provincial Offences Act (hereinafter referred to as the Transfer Agreement) must be conducted such that the integrity of the administration of justice is upheld and public confidence in the justice system is ensured and maintained.

These Conflict of Interest Guidelines are for Members of Council and employees of the municipality and other persons who are involved in performing duties under the Transfer Agreement. They are intended to provide clarity and positive direction in the proper conduct of those identified persons for matters relating to the administration and prosecution functions of the Provincial Offences Courts in the City of Toronto. The guidelines are supplemental to and consistent with the Code of Conduct for Members of Council and any other codes of conduct for employees of the City of Toronto. In turn, the policies of the City of Toronto are consistent with all statutes governing the conduct of members of Council, such as the Municipal Conflict of Interest Act, the Municipal Act and the Criminal Code of Canada.

1.0 Principles

The Conflict of Interest Guidelines are informed by the following key principles:

- (i) The fundamental tenets of procedural fairness and natural justice shall be affirmed and upheld;*
- (ii) Judicial and prosecutorial independence shall be preserved;*
- (iii) The justice process is to operate independently and free of political intervention;*
- (iv) Prosecutions are to be conducted separate from policing functions and with fairness and impartiality, competence and integrity; and*
- (v) Accessibility and a fair and timely process shall be assured.*

2.0 Definitions

“Senior Court Administrator” means a person who, in the execution of his or her office or employment, is engaged in the administration of court functions, including the performance or supervision of the functions of the clerk of the court, clerk monitor, trial co-ordinator, office administrative functions, and other employees or persons, other than prosecutors, who are involved in performing duties under the Transfer Agreement.

“Prosecutor” means a person acting on behalf of the municipality pursuant to the Transfer Agreement in prosecuting proceedings before the courts under the Provincial Offences Act or the Contraventions Act (Canada).

3.0 General Guidelines

- 3.1 Members of Council and staff and agents of the municipality who are involved in performing duties under the Transfer Agreement shall act in a manner that is consistent with the key principles and that upholds the integrity of the administration of justice.*
- 3.2 No employee or other person who is involved in performing duties under the Transfer Agreement may engage in any action or activity that will conflict with the proper performance of his or her responsibilities and duties under the Transfer Agreement.*

Operational illustrations of actions or activities that will conflict with the performance of duties under the Transfer Agreement include but are not limited to the following:

- (i) Giving preferential treatment to relatives, friends or organizations in which the employee or his or her family or friends have a financial interest;*
- (ii) Deriving or conveying to relatives, friends or organizations, any benefit from confidential information; and*
- (iii) Demanding, accepting, offering or agreeing to accept a fee, gift or benefit, personally or through family or friends, for their benefit or for the benefit of the employee or agent, which fee, gift or benefit is in any way connected with the performance of the duties of the employee or other person under the Transfer Agreement.*

- 3.3 *No person shall attempt to influence or interfere, financially, politically or otherwise, with employees or other persons performing duties under the Transfer Agreement.*
- 3.4 *The Municipal Freedom of Information and Protection of Privacy Act governs all information and records held by the City of Toronto. Employees and other persons who are involved in performing duties under the Transfer Agreement are expected to ensure that information is handled in compliance with this Act.*

4.0 Prosecution Guidelines

Prosecutors shall adhere to the following guidelines:

- 4.1 *A prosecutor shall not also be employed as an enforcement officer;*
- 4.2 *A prosecutor shall not hold or have held a municipal political office within the preceding twelve (12) months;*
- 4.3 *A prosecutor shall not, personally or through any person with whom they are associated in the practice or business of law, act or be involved in any way as counsel or solicitor for another person in respect of any offence charged against the person under the laws in force in Ontario, except where the Local Side Agreement provides otherwise.*
- 4.4 *A prosecutor shall not place him or herself, or permit him or herself to be placed, in a position where the integrity of the administration of justice could be compromised.*

Operational illustrations where a prosecutor may place him or herself in a position where the integrity of the administration of justice may be compromised include but are not limited to the following:

- (i) Attempting to influence the decisions or actions of a court or any of its officials by any means except open persuasion as a prosecutor;*
- (ii) Giving preferential treatment to relatives, friends or organizations in which the employee or his or her family or friends have a financial interest;*
- (iii) Deriving or conveying to relatives, friends or organizations, any benefit from confidential information;*
- (iv) Demanding, accepting, offering or agreeing to accept a fee, gift or benefit, personally or through family or friends, for their benefit or for the benefit of the employee or agent, which fee, gift or benefit is in any way connected with the performance of the duties of the employee or other person under the Transfer Agreement; or*
- (v) Appearing before a judicial officer with whom the prosecutor has business or personal relationships, such that the impartiality of that judicial officer may reasonably be seen to be affected.*

These examples are not exhaustive, and where a prosecutor has a concern that he or she may be placed in a position where the integrity of the administration of justice could be compromised, that prosecutor should immediately consult with the City Solicitor or other lawyer designated for that purpose.

5.0 Obligation to Report

- 5.1 *An employee or other person performing duties under the Transfer Agreement shall immediately report any attempt at improper influence or interference, financial, political, or otherwise to the City of Toronto and to the local Crown Attorney.*

A municipal prosecutor shall report any such attempt to the City Solicitor or other lawyer designated for that purpose. All other employees or persons performing duties under the Transfer Agreement shall report any such attempt to the Senior Court Administrator.

No action shall be taken against an employee or person for making any such report in the honest belief that there has been an attempt at improper influence or interference.

- 5.2 *A prosecutor shall disclose any actual or apparent conflict as soon as possible to the City of Toronto. Disclosure shall be to the City Solicitor or other lawyer designated for that purpose.*

Generally, a conflict occurs when a prosecutor acts in a matter where that prosecutor's objectivity is impaired to the extent that the prosecutor would be unable to properly, competently and impartially carry out his or her duties under the Transfer Agreement. Operational illustrations of conflicts include but are not limited to the following:

- (i) Acting against a former client;*
- (ii) Acting when the prosecutor, or a relative, partner, employer, employee, business associate or friend of the prosecutor has a direct or indirect interest in the proceeding which would reasonably affect the prosecutor's professional judgement; or*
- (iii) Prosecuting a matter where a related person is acting for the defendant.*

These examples are not exhaustive, and where a prosecutor has a concern that an actual or apparent conflict exists, that prosecutor shall immediately seek advice from the City Solicitor or other lawyer designated for that purpose.

- 5.3 *Where a prosecutor is charged with an offence under the Criminal Code of Canada or any other federal statute or regulation that is dealt with under the Criminal Code of Canada, such charge shall be immediately disclosed by the prosecutor to the City Solicitor or another lawyer designated for that purpose; and*

Where a prosecutor is charged with an offence under other federal statutes or regulations or provincial statutes or regulations, and where continuing to perform his or

her duties may erode public confidence in the administration of justice, the charge shall be disclosed to the City Solicitor or another lawyer designated for that purpose.

It is strongly recommended that a prosecutor who is charged with an offence under any federal statute or regulation or provincial statute or regulation consult with the City Solicitor or other lawyer designated for that purpose to determine if continuing to perform his or her duties may result in any erosion of public confidence in the administration of justice.

The City Solicitor, or other lawyer to whom the prosecutor reports, shall determine if any actual or perceived conflict exists and, if so, shall take the following action. After consideration, a response will be provided to the prosecutor in writing. If it is decided that no conflict exists, or that the conflict is of such minor nature that there will be no erosion of public confidence in the administration of justice if it is tolerated, then the prosecutor will be advised that he or she may continue to perform his or her duties under the Transfer Agreement in relation to that matter. If it is decided that a conflict of interest exists, the procedure to be followed will be specified in a written response.

- 5.4 *Where an employee or other person performing duties under the Transfer Agreement and being other than a municipal prosecutor has been charged with an offence created under a federal statute or regulation or a provincial statute or regulation, and where continuing to perform his or her duties may erode public confidence in the administration of justice, the charge shall be disclosed to the Senior Court Administrator.*

It is strongly recommended that an employee who is charged with an offence under any federal statute or regulation or provincial statute or regulation consult with the Senior Court Administrator to determine if continuing to perform his or her duties may result in any erosion of public confidence in the administration of justice.

The Senior Court Administrator shall determine, in consultation with the City Solicitor, if any actual or perceived conflict exists and, if so, shall take the following action. After consideration, a response will be provided to the employee or other person performing duties under the Transfer Agreement in writing. If it is decided that no conflict exists, or that the conflict is of such minor nature that there will be no erosion of public confidence in the administration of justice if it is tolerated, then the employee or other person performing duties under the Transfer Agreement will be advised that he or she may continue to perform his or her duties under the Transfer Agreement in relation to that matter. If it is decided that a conflict of interest exists, the procedure to be followed will be specified in a written response.

- 5.5 *Any decision reached by the Senior Court Administrator or the City Solicitor or other designated lawyer and arising from an obligation to report under this section may be appealed to the Chief Administrative Officer.*

6.0 Oath of Office

- 6.1 *All employees and other persons performing duties under the Transfer Agreement and involved with the administration of the Provincial Offences Courts in the City of Toronto shall swear or affirm the oath as set out in schedule A of these guidelines.*
- 6.2 *All municipal prosecutors engaging in prosecutions under the Transfer Agreement shall swear or affirm the oath as set out in schedule B of these guidelines.*

7.0 Implementation

- 7.1 *Members of Council of the City of Toronto shall be provided with a copy of these guidelines immediately after taking office and shall be advised that they pertain specifically to the duties of the City of Toronto in administering the Provincial Offences Act. They shall also be advised that these guidelines are in addition to their other responsibilities as elected officials contained in the approved Code of Conduct for Members of Council.*
- 7.2 *These guidelines shall be provided to all current and new municipal officials, prosecutors, and employees performing duties under the Transfer Agreement and shall form part of their orientation or training in relation to those duties.*
- 7.3 *These guidelines shall also be provided to all persons contracting with the City of Toronto to perform services in connection with the administration of justice.*

8.0 Breach

- 8.1 *As a result of a breach of these guidelines by a Member of Council, or by an employee or other person performing duties under the Transfer Agreement, the City of Toronto may be in breach of the Memorandum of Understanding with Her Majesty the Queen in Right of Ontario as represented by the Attorney General.*
- 8.2 *Although these are guidelines, actions that are contrary to the guidelines may also by their nature give rise to charges under the Criminal Code of Canada or provincial statute or to other disciplinary action.*

Schedules

Schedule A

All employees and persons performing duties under the Transfer Agreement, except municipal prosecutors, shall swear or affirm the following oath:

I swear (or affirm) that I will faithfully discharge my duties, and will observe and comply with the laws of Canada and Ontario, and except as I may be legally authorized or required, I will not disclose or give to any person any information or document that

comes to my knowledge or possession by reason of my employment, so help me God (omit last four words in an affirmation).

Schedule B

All municipal prosecutors engaged in prosecutions under the Transfer Agreement shall swear or affirm the following oath:

I swear (or affirm) that I will truly and faithfully, according to the best of my skill and ability, execute the duties, powers and trusts of a prosecutor, as an officer of the Court, without favour or affection to any party, so help me God (omit last four words in an affirmation).

I also swear (or affirm) that I will faithfully discharge my duties as a prosecutor, and will comply with the laws of Canada and Ontario, and except as I may be legally authorized or required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a prosecutor, so help me God (omit last four words in an affirmation).)