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The Regional Municipality of Durham Report

From: Chief Administrative Officer and the Regional Solicitor and Director of
Legal Services
Report: #2024-INFO-61
Date: October 4, 2024

Subject:

Update on the Provincial Offences in the Office of the Chief Administrative Office – Legal Services

Recommendation:

That this report be received for information.

Report:

1. Purpose

1.1 The purpose of this report is to provide an update on the impact of ongoing court closures by the Ministry of the Attorney General (MAG) on Provincial Offences Act (POA) Courts, including the shortage of judicial resources and the backlog of cases originating from the full POA Court closures during the COVID-19 pandemic.

This report will review the following:

- i. Increase in charge volumes from pre-pandemic to present day.
- ii. Exacerbated lack of judicial resources.
- iii. Implementation of ASE/RLC.
- iv. Actions taken to alleviate backlog.
- v. Update on POA revenues.

2. Background

2.1 In December 2000, the province transferred the operation of the Provincial Offences Act (POA) Court to the Region. This was due to the Attorney General recognizing that future improvements in service delivery for local justice matters can best be achieved in partnership with local governments. Both the Region and the Province

agreed to work together to improve POA Court Services to provide the most modern, efficient, and effective justice system attainable.

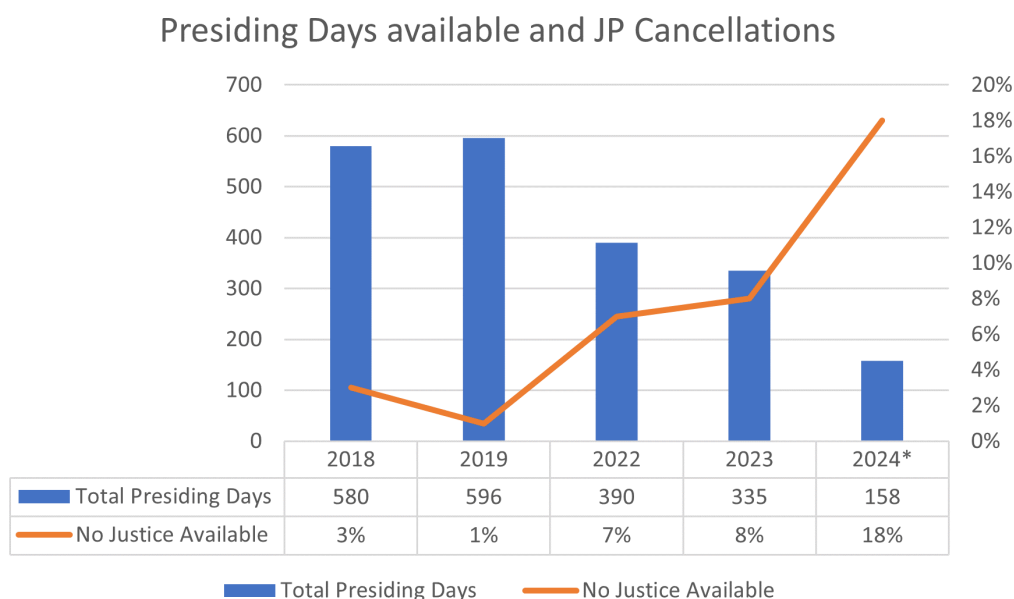
- 2.2 Since the transfer, the Region has made significant enhancements to service delivery, including early resolution courts, pre-trial formal resolution with Prosecution Services, transfer of more serious Part III and Part IX offences, virtual court capabilities, E-tickets, paytickets.ca and French language services. Leading up to the pandemic, the Region's resolution rate, time to schedule an early resolution and time to trial were the best in the province, with only a 30 day turn around for an early resolution meeting and 5 months for a trial.

3. POA Court Operations and Judicial Resources

- 3.1 Durham POA Courts operated four full-time courts until their closure in March 2020 due to the COVID-19 pandemic.
- 3.2 When the courts reopened in 2020, the Regional Senior Justice of the Peace Office provided judicial resources for one courtroom with a second courtroom opening in November 2021. To date, Durham Region POA court has not returned to its pre-pandemic four-courtroom operation. There are four (4) judicial vacancies to fill.
- 3.3 POA Courts are now required to be equipped with hybrid technology allowing for fully in-person, fully virtual or hybrid virtual and in-person proceedings in every operational Courtroom. Consequently, in February 2023, two courtrooms were converted to hybrid at an approximate cost of \$110,000.
- 3.4 Durham POA Courts have continually requested that the Regional Senior Justice of the Peace open the two remaining courtrooms. This request was declined, citing the lack of hybrid capabilities in those courtrooms. However, other jurisdictions that have invested in upgrading their POA Courts with hybrid technology have also not been allocated judicial resources, leaving those courtrooms unused.
- 3.5 The Region has committed to upgrade all courtrooms to the hybrid requirements when confirmation is provided that those two courtrooms would be re-opened.
- 3.6 Durham POA Courts have been adept in devising an innovative and interim solution. A third courtroom was converted to hybrid by POA Court staff using pre-existing hardware and technology at minimal expense and was approved for hybrid use in June 2023. However, POA Courts has not been allocated judicial resources for this third approved hybrid courtroom in the 2024 Court master plan. Durham POA courts continues to work towards a low-cost solution for hybrid conversion of the 4th and final courtroom to be completed in a matter of months.
- 3.7 There continues to be a lack of judicial resources in 2023 and 2024 for the Central East Region. For this reason, the Regional Senior Justice of the Peace Office cannot provide or approve additional judicial resources equivalent to our pre-pandemic levels.

- 3.8 In addition to being short two courtrooms, the Region continues to experience administrative adjournments of entire court lists due to a Justice of the Peace not being available for scheduled court days. These matters must be re-scheduled resulting in further delays and backlog.
- 3.9 Due to these administrative adjournments, the operational capacity of POA courts is now approximately 35%-45% of what it was before the pandemic. Table 1 shows a significant decline in the number of scheduled presiding days provided by the Regional Senior Justice of the Peace office since 2018, while unscheduled cancellations by Justices of the Peace have increased.

Table 1



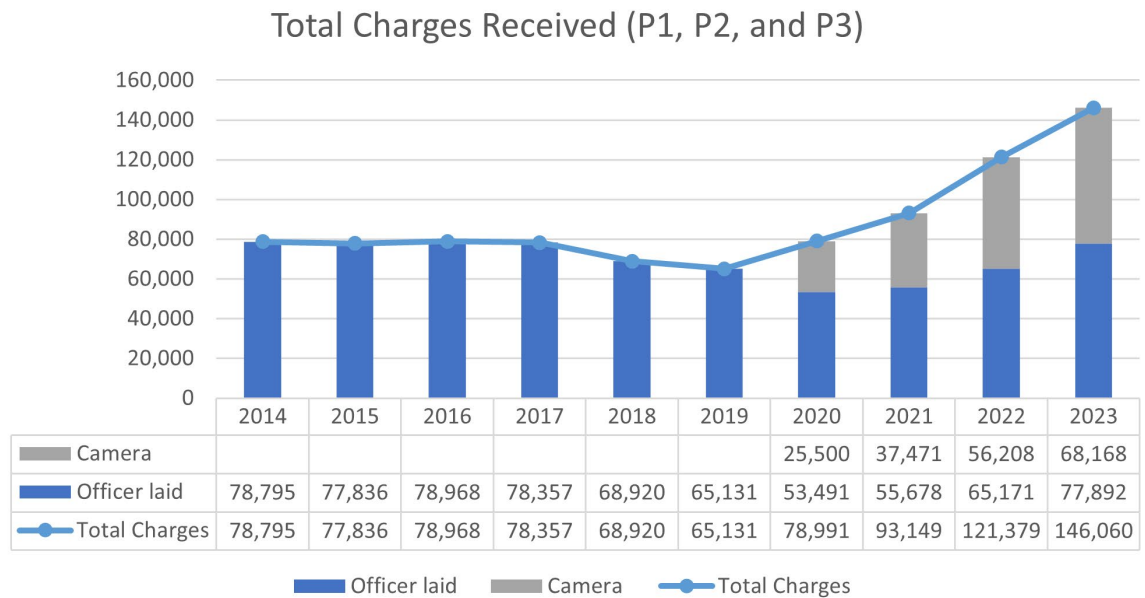
**2024 is prorated up to May 1st. 2020 and 2021 were impacted by Covid-19 court closures and therefore not included.*

- 3.10 In 2019, across four courts, there were 596 presiding days, with only 6 days affected by Justice of the Peace cancellations, representing 1% of the total. By 2023, with just 335 presiding days, 27 days were impacted, accounting for 8% of the total presiding days.
- 3.11 The extrapolated data for 2024 suggests this year will suffer the greatest impact of Justice of the Peace cancellations. 28 days have been impacted of 158 presiding days which accounts for 18% of the total presiding days (up to May 1st 2024).
- 3.12 The lack of judicial resources also impacts services outside of the courtroom such as intake services.

Intake services include but are not limited to:

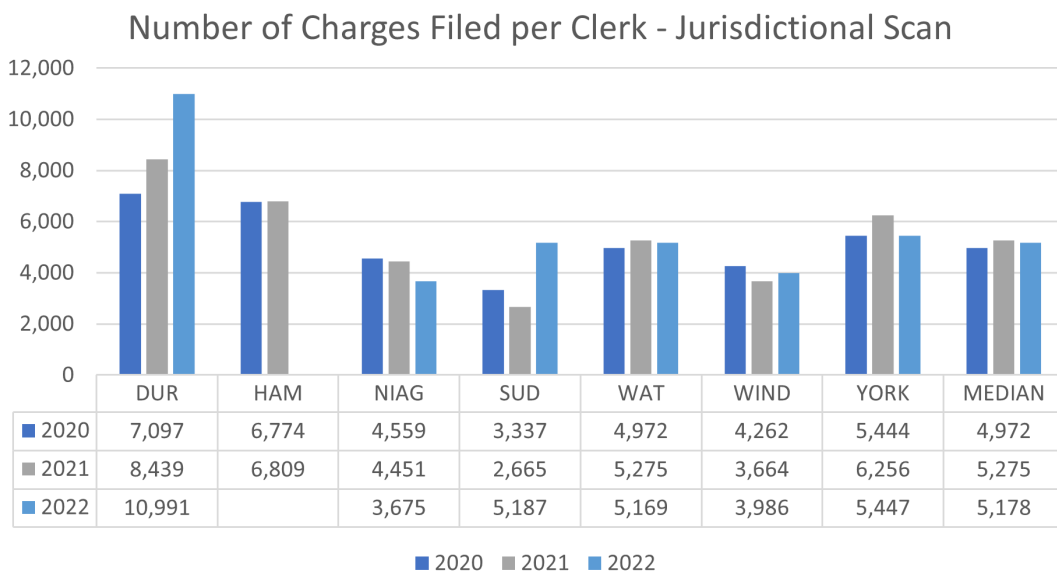
- i. Review defendant's requests for extensions of time to pay.
 - ii. Review reopening requests where the defendant was convicted through no fault of their own.
 - iii. Review and accept part 3 charges and confirm the summons laid by enforcement so prosecution of the matter can proceed.
 - iv. Review applications to strike out Part II convictions where the defendant was convicted through no fault of their own.
- 3.13 When a Justice of the Peace is unavailable, intake services are the first to be disrupted, leading to negative consequences for the public. Delays in processing extension applications or reopening requests can extend to 10 days or more, particularly near or during court closures. This results in prolonged license suspensions and prevents individuals from reinstating their driver's license in a timely manner, often impacting their ability to work.
- 3.14 Delays in reviewing Part 3 charges often lead to cases missing their first appearance date, resulting in a loss of jurisdiction. This forces enforcement agencies to allocate additional resources to re-summon the defendant and restart the process.
- 3.15 The intake backlog leads to an increase in public inquiries to our call center, with individuals seeking updates on their applications. This adds additional pressure on administrative staff, who are already managing an average of 13,000 charges per clerk annually.
- 4. Charge Volumes and Charges Processed: Pre-pandemic to Post Pandemic Comparison**
- 4.1 Durham Region's population and lane kilometers have expanded, leading to increased police enforcement activity. The table below shows charge volume trends since 2014. Despite a significant rise in charges, the number of administrative staff has remained the same, while judicial resources have been reduced to less than half of their traditional levels. Please see Table 2.

Table 2 – Volume of Charges



4.2 The rise in charge volume has greatly strained staff capacity. In 2022, the average Court Administration Clerk processed twice as many charges as those in POA Courts of other jurisdictions. This trend has persisted through 2023 and 2024. See Table 3.

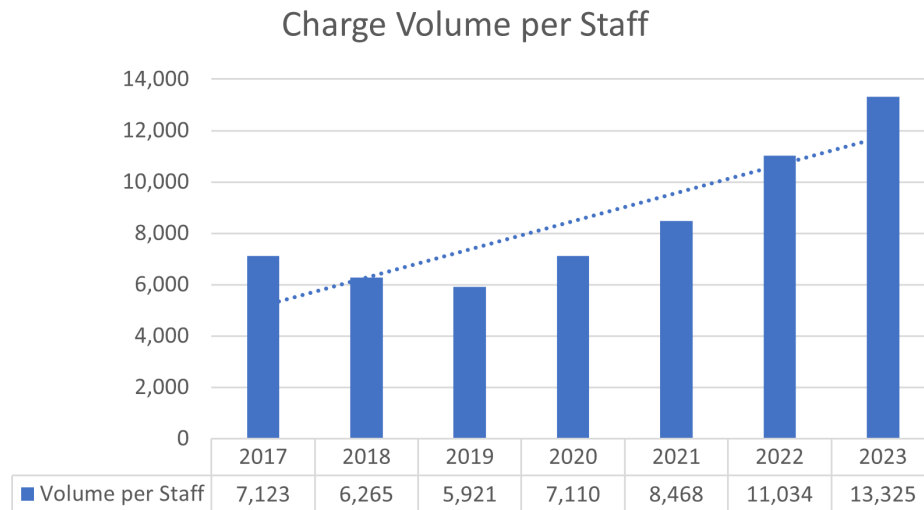
Table 3



4.3 Charges per in Clerk in 2023 were 13,325, which is an increase of 21% from 2022.

4.4 The continued growth of officer laid charges and the introduction of automated speed enforcement and red-light camera has doubled the charge volume compared to historical highs. See Table 4.

Table 4



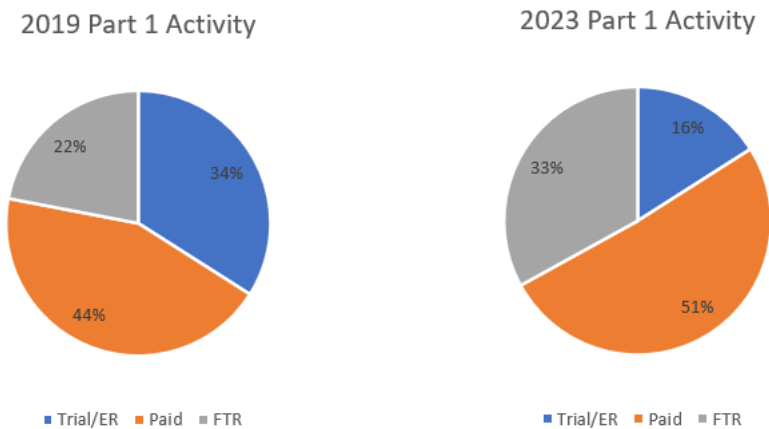
5. Majority of Charges Progress Normally

5.1 Durham POA Courts have faced persistent challenges due to a shortage of judicial resources and limited court staff. Both prior to and in response to the pandemic, POA Courts and Prosecution Services implemented innovative measures to enhance efficiency and maximized the effectiveness of staff to drive resolutions and optimize the limited judicial resources that have been made available.

5.2 These measures enabled Durham’s POA courts to maintain incredible resilience to the impacts set out above. POA courts and Prosecution Services track several statistics related to pre-trial resolution and use of trial time. A comparison of these statistics pre-pandemic and post pandemic has shown that resolution rates remain strong and courtroom utilization remains efficient and effective.

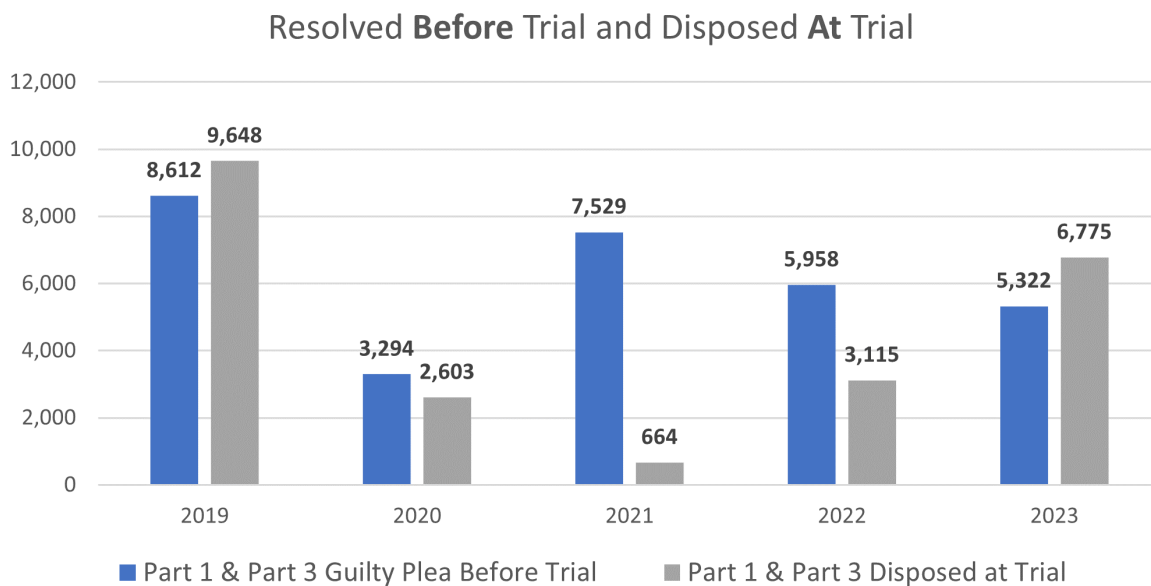
5.3 Part 1 pre-paid fines (PPF), an out-of-court guilty plea option, have shown improvement since 2019. The percentage of pre-paid fines has increased from 44% to 56% between 2019 and the present. Fail to respond (FTR) convictions also resolve a substantial number of cases outside of court, resulting in fewer trials requested. See the below comparison of pre-pandemic vs. post pandemic Part 1 offence resolutions of matters, Table 5.

Table 5



5.4 There continues to be both Part 1 and Part 3 matters resolved either immediately before trial or disposed of at trial. Between 2020 and 2023, with limited or no courtrooms available, trial scheduling was hindered, leading to a significant decline in such resolutions. Please see Table 6.

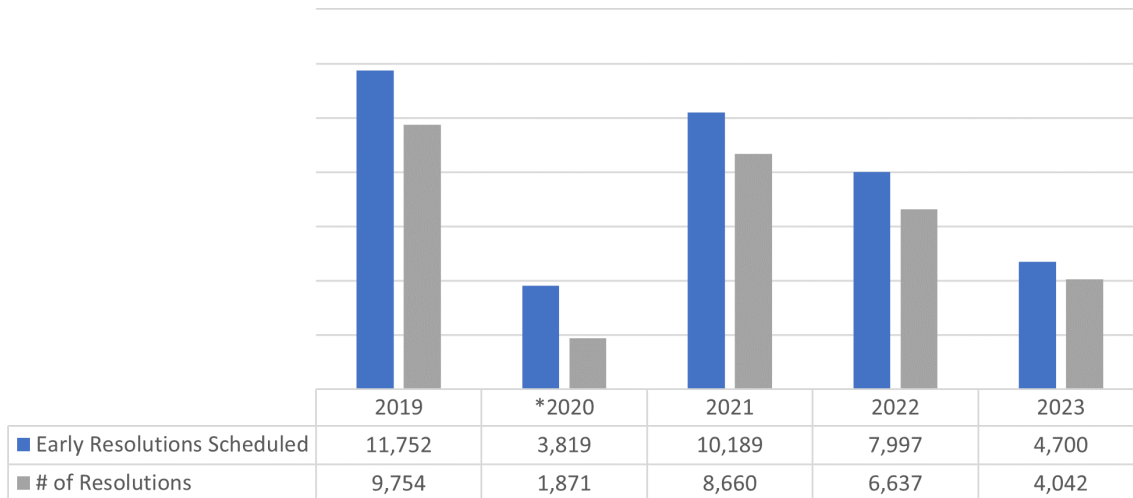
Table 6



5.5 The Region is a designated early resolution (ER) location. Consequently, a defendant has the option of scheduling a meeting with a prosecutor to discuss their Part 1 charge. Prosecution Services successfully reaches a resolution approximately 85% of the time. The remainder are scheduled for trial. The below table illustrates the number of early resolutions scheduled and resolved from 2019 to 2023. POA Prosecutions success rate at resolving scheduled Early Resolutions has continued to improve over this period. Please see Table 7.

Table 7

Early Resolutions Scheduled and Resolutions Reached



**2020 was impacted by the court closures. ERs were not scheduled from March to September 2020.*

5.6 Prosecution Services converted several Part 1 scheduled Early Resolution days into Part 3 trial days to prioritize the most serious cases with high public interest. This has impacted the number of early resolutions scheduled.

6. Administrative Penalty System (APS) – Camera-based Offences

6.1 In September 2020, Automated Speed Enforcement (ASE) and Red Light Camera (RLC) programs were implemented in Durham Region, steadily increasing the number of charges received each year by Durham POA.

6.2 Since 2017, POA Courts has seen two trends in Part I charges. From the period of 2017 to 2019 POA Courts experienced declining charge volumes for Part 1 charges. These are charges laid by outside law enforcement agencies, primarily traffic tickets from Durham Region Police Services. That declining trend resulted in net revenues losses from the POA Courts operations.

6.3 The second trend, which began in 2020, and resumed towards the end of the pandemic in 2022 has shown increasing charge volumes for these same Part 1 charges. These charges are now at or above pre-pandemic levels dating back to 2017. As Durham population and road network continues to grow, POA Courts would expect this trend of growing Police-laid traffic tickets to continue. As a result of that trend and the addition of camera-based charges, POA net revenue has also seen an increase. In 2019, Durham POA gross fine revenue with 4 operational courts was \$6.164 million and the 2023 Durham POA gross fine revenue with only 2 operational courts was \$11.441 million.

- 6.4 To address the capacity challenges in POA Courts, a separate Administrative Penalty System (APS) is being developed to address camera-based offences. These camera-based charges will be case managed and adjudicated by resources wholly within the jurisdiction of the Region. This will provide greater flexibility, improved customer service and the ability to match resources to requirements.
- 6.5 Camera-based offences would be reviewed by a screening officer and adjudicated by a hearings officer; therefore, they would be processed more expeditiously than the current POA system. This would leave more court time in the traditional POA system for police-laid and/or more serious or high-priority charges.
- 6.6 There will still be challenges present in POA until the Region has been restored to the pre-pandemic capacity of a four-courtroom model.

7. Relationship to Strategic Plan

7.1 Implementing the administrative penalty system aligns with and addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

7.2 Durham Vision Zero – Strategic Road Safety Action Plan:

- The automated speed enforcement and redlight camera initiative was introduced in Durham Region in 2020 in support of Durham Vision Zero, a long-term plan to ensure a safe transportation system that sees no lives lost or serious injuries on Durham roadways. APS will provide a more efficient and effective method of managing these disputes, thereby promoting the further success of Durham Vision Zero.
- Under Provincial legislation, the Ontario Court of Justice is responsible for determining courtroom utilization, and the nature and volume of charges that can be scheduled into each courtroom. Removing red light camera and automated speed enforcement disputes from the provincial courts allows the judicial system to better balance the limited court space available so that trials can be held for other offences.

7.3 Service Excellence:

- An administrative penalty system can process red light camera and automated speed enforcement disputes faster than the provincial offences court, allowing the Region to process disputes within a reasonable period. APS also allows for more online service delivery and will assist in streamlining processes by providing clear information on the conditions to meet for a penalty to be cancelled. This will enhance the customer experience.
- Ontario Regulation 355/ 22 outlines the dispute resolution procedures that must be in place which ensure timely and fair dispute resolution services that will improve the customer experience, contribute to public safety by

building capacity within the court system and support a more efficient resolution of disputes as well as expedited payment of penalties. This demonstrates commitment to continuous quality improvement.

- Optimize resources and partnerships to deliver exceptional quality services and value.
- Demonstrate commitment to continuous quality improvement and communicating results.

7.4 Community Vitality:

- By enhancing community safety and well-being by deterring unsafe behaviour on roads.

8. Relationship to Strategic Plan

8.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

- Goal 5: Service Excellence. Objective: To provide exceptional value to Durham taxpayers through responsive, effective, and fiscally sustainable service delivery
- 5.1 Optimize resources and partnerships to deliver exceptional quality services and value.
- 5.4 Drive organizational success through innovation, a skilled workforce, and modernized services

9. Conclusion

9.1 In 2025, the Region anticipates bringing forward the administrative penalty system which will allow camera-based charges to move out of POA Courts and into an APS Hearing system.

9.2 The hybrid conversion of two additional courtrooms should be completed in 2024.

9.3 Once the 4th POA Court is upgraded to a hybrid Court, the Regional Senior Justice of the Peace office will be advised that additional judicial resources can now be assigned to Durham POA Court's 4 hybrid courtrooms.

9.4 A group of Regional Solicitors and Court Managers is currently organizing a joint meeting with the judiciary to address the issue of insufficient judicial resources in Durham Region.

9.5 The lack of judicial resources in Durham Region has also been brought to the direct attention of the Minister of the Attorney General by the President of the Ontario Bar Association (OBA), Kelly McDermott. It has also received media attention due to lobbying efforts by the OBA on our behalf.

9.6 Further, the POA Court Manager, Prosecution Manager and Regional Solicitor will be working with and supporting the Regional Chair and Corporate Communications Office to continue to work with the province to address the lack of judicial resource concern. Similar efforts in Government Relations are being undertaken by Municipal POA Court Operators throughout the Central East Region.

10. Previous Reports and Decisions

10.1 2022-A-21 Transfer of Part III and IX Prosecutions from the Province of Ontario, Ministry of the Attorney General (MAG) to the Regional Municipality of Durham.

11. Attachments

11.1 Attachment #1: Confidential Memo re: Update on Provincial Offences
Under Separate Cover

Prepared by: Jason Hunt, Regional Solicitor and Director of Legal Services, at 905-668-7711, extension 2086.

Respectfully submitted,

Original signed by

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