

To:	Warden McQueen and Members of Grey County Council
Committee Date:	October 22, 2020
Subject / Report No:	LSR-CW-03-20
Title:	Legal Services Update
Prepared by:	Michael Letourneau, Director of Legal Services – County Solicitor
Reviewed by:	Kim Wingrove, Chief Administrative Officer
Lower Tier(s) Affected:	
Status:	Recommendation adopted by Committee as presented; Endorsed by County Council November 12, 2020 per Resolution CC87-20;

Recommendation

1. That report LSR-CW-03-20 which provides a Legal Services update, be received for information.

Executive Summary

Legal Services has continued to serve the operational needs of the County in the past year. In addition to supporting County departments in their day-to-day needs, Legal Services has supported numerous high-priority County projects.

The COVID-19 pandemic has had a significant impact on Legal Services' operations, due to many factors, including significant changes in the provincial and federal legislative landscape, the significant role of the County in responding to the pandemic, and the introduction of pandemic-related charges which must be prosecuted by the department's prosecutors.

The department continues to develop and identify ways to further support County department operations. It is also continuing in discussions with the Ministry of the Attorney General regarding the proposed transfer of prosecution authority for many matters handled under Part III of the *Provincial Offences Act*, such as stunt driving.

Background and Discussion

The Legal Services department was established in October 2018 to bring the County's legal services matters in-house to improve service delivery and manage costs. This report is an update on the activities of the department in the past year.

The department has three primary areas of operation:

- Prosecutions under the Provincial Offences Act
- Legal advisory (solicitor) services to County Council and County departments
- Management of the County's outside legal counsel

Prosecution Services

In March, the department completed its first year of internal operations for offence prosecutions under the Provincial Offences Act (POA).

Most prosecutions are handled pursuant to the Memorandum of Understanding (MOU) with the Ministry of the Attorney General (MAG) and the County of Bruce, which relates to prosecutions of "tickets" issued by police officers in both Grey and Bruce Counties for violations of statutes such as the Highway Traffic Act – these are otherwise known as charges under Part I of the POA. The department also prosecutes charges under both Part I and the more complex Part III in respect of County By-laws – in particular, the Forest Management By-law.

In the year prior to the March 2020 shutdown of POA court operations due to the COVID-19 pandemic, Legal Services prosecutors prepared for and handled approximately 2,000 matters scheduled for trial. The vast majority of these matters were resolved on the trial date without proceeding to an actual trial, with only 72 matters proceeded to a full trial.

Although in-court operations were shut down, Legal Services prosecutors were required to remain active. In addition to handling the continued volumes of routine traffic offences and other matters, they also were engaged as part of the local and Provincial response to the pandemic.

The Province created a range of new offences through orders made under the Emergency Management and Civil Protection Act (EMCPA) and later under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020 (ROA). The prosecutors were called on to advise enforcement officials on how those charges operated and to advise on their application in specific enforcement situations.

In order to streamline the pandemic response in both Grey and Bruce counties, Legal Services has extended its prosecution services to support those lower-tier municipalities in Grey and Bruce Counties who are pursuing their own enforcement of the EMCPA/ROA. The system established by the Province for prosecution of these charges would normally make them the responsibility of the lower-tier municipalities' by-law prosecutors. In order to reduce burdens on those municipalities and to support a consistent approach to the administration of justice, Legal Services taken on the prosecution of EMCPA/ROA charges laid by the enforcement staff of those municipalities together with the prosecution of police-laid charges. Those municipalities pursuing their own enforcement of the EMCPA/ROA are:

- The Town of The Blue Mountains
- The Municipality of Northern Bruce Peninsula
- The Town of South Bruce Peninsula
- The Township of Huron-Kinloss

By continuing with their workflow throughout the pandemic to the maximum extent possible, Legal Services' prosecutors have been able to support the reopening of the County's POA court in recent weeks by being able to bring full slates of matters forward to be heard in the Court's new audio-only format. A total of 122 matters have been concluded in the first two weeks of audio Court matters, with about 675 in various stages of pre-hearing preparation as of early October. At present, audio Court matters do not include contested matters which may result in a trial, as the POA court administration is not yet permitted to schedule full trials, but many matters have been able to be heard for pre-arranged guilty pleas and other expeditious dispositions.

The department continues to be involved in discussions with MAG on the transfer of responsibility for prosecution of offence charges laid by police under Part III of the POA. These charges include more serious matters such as stunt driving and driving without insurance. The Director and the Provincial Offences Prosecutor are participating in a MAG working group to define the scope of the proposed transfer. MAG has not yet made a formal proposal in respect of the transfer; once a proposal is made and a draft agreement negotiated, the matter will be brought forward to County Council for review.

Solicitor Services

Legal Services has been actively providing legal advice on all aspects of the County's operations.

Services are available to County Council and to all County departments, and range from the delivery of summary legal advice to detailed assistance and support on complex legal matters, including litigation, real estate, governance, policy/procedure development, and legislative analysis.

In the preceding year, the single most impactful matter for the giving of legal advice has been the COVID-19 pandemic. Matters of various types related to the pandemic have occupied about 30% of Solicitor Services resources available over the past 12 months, or about 60% of the resources available during the pandemic period itself.

Beyond supporting County operations throughout the pandemic, Legal Services has been pleased to be able to support a number of ongoing priority County initiatives and projects in the past year, including:

- The redevelopment of the Rockwood Terrace facility, including the acquisition of adjacent property in Durham and the related disposition of the County Quarry
- The resolution of the land claim litigation brought by the Saugeen Ojibway Nation
- The development and launch of the Grey Transit Route transit service
- The donation of land to Grey Bruce Health Services for the construction of the new Markdale Hospital in conjunction with the proposed redevelopment of the adjacent Grey Gables facility
- The potential acquisition of property for a new Depot for Transportation Services in the Patrol D area

- The development of the Regional Agricultural Learning and Demonstration Site adjacent to Grey Roots
- The contracting for the Integrated Fire Communications project

Outside Counsel Management

While Legal Services continues to provide a growing range of services to all County departments, it does not have in-house sufficient expertise, nor enough working capacity, to provide advisory services on the full range of legal matters that the County may be involved with. It will continue to be necessary for the County to employ outside legal counsel to deal with certain types of specialized matters, as well at times when Legal Services could advise on a matter but does not have the capacity to respond promptly.

Legal Services has been working to establish a complete program of evaluation of the services of outside legal counsel, but this has not been fully implemented in the past year due to resources limitations and expanded internal workloads driven by priority projects and the COVID-19 pandemic.

To date, oversight has been established in certain areas, mostly with respect to Planning Act matters and real estate matters. The department's ability to review work provided in other areas is dependent on available resources and general workloads.

Legal and Legislated Requirements

In general, Legal Services must comply with the legislative framework regulating the practice of law (by lawyers) and the delivery of legal services (by paralegals) established under the Law Society Act and the Solicitors Act, the relevant rules of the courts and tribunals before which it appears, as well as the established common law regarding the practice of law.

In providing prosecution services, Legal Services' prosecutors must also comply with the legal duties of a prosecutor, as well as the provisions of the 2000/01 Memorandum of Understanding with the Ministry of the Attorney General regarding prosecution of police-laid charges laid under the Provincial Offences Act and the provisions of the Ministry's Crown Prosecution Manual that apply to Provincial Offences Act matters.

Financial and Resource Implications

Future financial and resource requirements for the department will be addressed through normal budget and resource management processes.

Relevant Consultation

- Internal: Chief Administrative Officer
- External (list)

Appendices and Attachments

None.