 Committee Report

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| **To**: | Warden Hicks and Members of Grey County Council |
| **Committee Date**: | October 27, 2022 |
| **Subject / Report No**: | LSR-CW-02-22 |
| **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 per Resolution CW140-22; Endorsed by County Council November 10, 2022, per Resolution CC98-22. |

# Recommendation

1. **That report LSR-CW-02-22 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 indirect effects of the COVID-19 pandemic continue to have a significant impact on Legal Services’ operations. Unexpected changes to *Provincial Offences Act* (POA) Court schedules for prosecution staff have created impacts on operations and required changes in work plans. These changes have been arranged in close coordination with the County’s court administration staff and allow both prosecution and administration staff to adapt to these changes and continue to handle the flow of Part I POA charges.

Staffing changes have recently been made to provide organizational support for both prosecution services as well as solicitor (legal advice) and outside counsel management services. These changes have included transferring responsibility for realty services from the Clerk’s office to Legal Services in order to provide organizational support and enhance the delivery of realty services generally.

## 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
* Solicitor (legal advice) services to County Council and County departments
* Management of the County’s outside legal counsel

In September 2022, responsibility to oversee real estate transactions, land title, and similar issues were transferred from the Clerk’s office to Legal Services.

### Prosecution Services

Prosecution services are primarily delivered by staff representing approximately 1.85 FTEs under the supervision of the County Solicitor. This is the fourth year of internal operations for offence prosecutions under the *Provincial Offences Act* (POA) at both of the Court sites operated by the County (through an agreement with Bruce County) in Owen Sound and Walkerton. Most prosecutions are for offence charges laid by police agencies under Part I of the POA. Operations continue in a modified format due to modifications to POA Court processes as a response to the COVID-19 pandemic.

In recent months, the department has had to respond to a loss of regularly scheduled Court time caused by the cancellation of 50% of Court hearing days regularly assigned to the County for Owen Sound matters. We understand that these cancellations are due to a lack of judicial resources available for scheduling across the entire West Region of the Ontario Court of Justice.

Although the number of hearing days for Owen Sound has been significantly reduced, the department still must handle the same overall volume of charges. Prosecution staff have worked closely with Court administration staff to manage time on each hearing day that Prosecution staff lead charges on. This approach has allowed Court operations to proceed as efficiently as possible on those days given the limited resources available, but creates a high demand for staff time on those days.

Staff support for managing the time requirements of hearing days has benefitted greatly from the creation of a Prosecution Clerk position. The position is responsible for organization of documents and communications in prosecution matters, and serves as the first point of contact for defendants, legal counsel/representatives, and police and civilian witnesses. The support from this position as been invaluable for handling process changes from the transition of the County’s POA court to a formal “early resolution” (ER) approach, as well as for streamlining the efforts of all staff working on prosecutions.

With the lapsing in March and April of pandemic-related orders under the *Emergency Management and Civil Protection Act (EMCPA)* and the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (ROA), the department’s operations for prosecuting charges laid by enforcement personnel of lower-tier municipalities in Grey and Bruce in respect of those orders have largely ceased. Operations to prosecute violations of orders made by the Medical Officer of Health under the *Health Protection and Promotion Act* (HPPA) in respect of COVID-19 have similarly ceased.

The department continues to participate in discussions with a working group convened by the Ministry of the Attorney General (MAG) regarding the transfer of Part III POA prosecution functions to municipalities. This discussion process remains slow, and since the last update from the department to County Council the province has provided some additional guidance on how the transfer is to be structured, further details, particularly with respect to financial and cost implications, remain largely undefined. Since this transfer would likely create additional work for the department, a specific report would be provided to Council once complete terms are provided.

### Solicitor Services

Legal Services continues to actively provide legal advice on virtually all aspects of the County’s operations.

Solicitor services are available to County Council and to all County officers and 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, by-law drafting, and legislative analysis.

The department continues to advise on matters that are direct and indirect effects of the COVID-19 pandemic. Although fewer direct effects of the pandemic are being seen beyond areas such as Long-Term Care, indirect effects continue to exist in a range of areas, including real estate prices, liability protection and insurance.

Beyond supporting a wide range of general operational requirements, Legal Services has worked on a number of priority County projects in the past year, including:

* Long-term Care redevelopment
* Acquisition of a site for the Patrol D depot
* Revision of the County’s forest management by-law
* Acquisition and development of the supportive housing facility in Owen Sound
* Advancement of the Community Improvement Plan strategy
* Development of the revised Development Charges by-laws.

The overall solicitor services workload remains high, due to continued overall requests for solicitor services, as well as to ongoing pandemic impacts. Workload remains driven in large part to the legal complexity in various areas of County operations, especially long-term care, transportation, and planning as well as the County’s ongoing finance and governance obligations.

In the department’s 2021 report a need was identified for a dedicated law clerk / department assistant position to manage internal discussions with client departments, assist with document review and preparation, and manage logistics and budgets. In September 2022, to support the creation of such a position, a realignment of some responsibilities was undertaken with the Clerk’s department, with responsibility for realty matters was transferred to Legal Services. A new position of Real Estate Coordinator – Law Clerk was created to deliver both real estate and law clerk services. The position has recently been filled, but due to impending staff leaves, full operations of this position will not be fully established until 2024, although some support is already being provided.

### 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.

Efforts to develop a complete program of evaluation of the services of outside legal counsel have remained stalled due to requirements for service provision on solicitor service and prosecution matters resulting from both County priority projects as well as continued demands created by the COVID-19 pandemic.

To date, oversight has been established in certain areas, including:

* Planning Act / LPAT appeal matters
* Real estate matters, particularly transactional matters (e.g. purchases)
* Intellectual property
* General litigation, excluding insured claims

The primary areas where oversight has not been established remains with respect to human resources matters and insured claims. With increased staff resources becoming available, the department hopes to expand oversight into these areas in 2023 and 2024.

## Realty Services

As noted above, responsibility for realty services was transferred from the Clerk’s office to Legal Services. Realty services work involves handling acquisitions and dispositions of the County real estate holdings and interests in land (e.g. easements). It also involves identification and rectification of errors and anomalies in land title records for County assets and interests and dealing with third-party requests related to land title (e.g. applications from developers for absolute title).

Prior to the transfer, Legal Services generally worked closely with the Clerk’s office on realty matters given the nature of realty work and real estate law. The transfer of responsibility allowed for that close working relationship to be formalized and is expected to lead in the long term to future improvements in process efficiency and provision additional further services by staff rather than through external law firms (e.g. land title registrations).

The transfer of responsibility maintained current staff in the same role, so there has been no disruption in services provided as a result. Upcoming staff leaves will leave some realty functions temporarily vacant; these are areas that cannot be effectively backfilled in the relevant timeframe. Efforts will be made to limit realty services work to higher priority and emergent matters during this time, and outside service providers may be engaged to assist when necessary to address priority matters.

## 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 its staff 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 and ethical duties of a prosecutor, as well as the 2000/01 Memorandum of Understanding with the Ministry of the Attorney General regarding Provincial Offences Act prosecutions and the provisions of the Ministry’s Crown Prosecution Manual that apply to Provincial Offences Act matters.

In providing realty services, the department must comply with the provisions of the Real Estate and Business Brokers Act, 2002 (which is expected to be renamed in the future to the Trust in Real Estate Services Act, 2002) with respect to professional licensing exemptions.

## Financial and Resource Implications

No major requirements beyond currently budgeted resources are currently projected for 2023.

The creation of the Law Clerk – Real Estate Coordinator position has included the existing budgeted funding for the realty portion of the position. Intended backfill arrangements necessitated by staff leaves are expected to allow the position to be funded in 2023 based on current budgetary allocation levels, but complete funding for the law clerk portion of the position is expected to be required for 2024.

# Relevant Consultation

Internal (list): Chief Administrative Officer

External (list)

### Appendices and Attachments

None.