

<b>To:</b>	Warden Hicks and Members of Grey County Council
<b>Committee Date:</b>	September 12, 2019
<b>Subject / Report No:</b>	LSR-CW-02-19
<b>Title:</b>	Legal Services Update
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<b>Reviewed by:</b>	Kim Wingrove, Chief Administrative Officer
<b>Lower Tier(s) Affected:</b>	
<b>Status:</b>	Recommendation adopted by Committee as presented per Resolution CW178-19 September 12, 2019;

## Recommendation

1. **That report LSR-CW-02-19 which provides a legal services update, be received for information.**

## Executive Summary

Legal Services continues to develop its operational roles within the County.

Internal prosecution services have been established and are in full operation before the Provincial Offences Court. Operational responsibilities regarding prosecution matters have been transferred from Court administration staff to Legal Services.

Legal advisory services have been established and are advising all County departments, with continued use of outside legal counsel in some areas. Work to assess the delivery of service by outside legal counsel is ongoing.

## 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 since it was established.

Three areas for development of the department have been established:

- Prosecution of charges under the Provincial Offences Act
- Provision of legal advisory services to County Council and County departments
- Management of outside legal counsel advising the County

Development has proceeded in each of these three areas.

## Prosecution Services

In March, Legal Services assumed responsibility for prosecution of charges under Part I of the Provincial Offences Act which have been laid by police in both Grey and Bruce Counties.

Grey County has been responsible for prosecution of charges laid by police within Grey and Bruce since 2001/02 pursuant to an agreement with the Ministry of the Attorney General (MAG). MAG continues to handle prosecution of charges laid by police under Part III.

Prior to March 2019, the County used the services of Middlebro' & Stevens LLP to carry out prosecutions under the MAG agreement. In order to establish in-house prosecution services, Legal Services hired an experienced Provincial Offences Prosecutor. The Prosecutor also prosecutes by-law charges laid directly by Grey County, under both Parts I and III, although this is a very small part of their overall caseload; the Prosecutor does not prosecute charges laid by lower-tier municipal by-law enforcement officers.

The Prosecutor commenced handling prosecutions on March 18. From that date, to August 31, approximately 8,500 Part I charges were laid in Grey and Bruce; this figure includes charges laid by municipal by-law officers and other enforcement agencies, such as the Ministry of Labour, which the County would not prosecute. During that time, defendants in 726 such matters elected to have a court hearing and their charges were forwarded to the Prosecutor for review and prosecution. For those 726 charges:

- 420 were resolved by the prosecutor before a formal hearing
  - 351 resulted in guilty pleas
  - 69 charges were withdrawn
- 113 charges were dealt with at scheduled hearings
  - 40 formal trials have been held
  - 73 defendants failed to appear for their trial, and were convicted in their absence
- 189 charges have been adjourned to later court dates and are pending resolution

The prosecutor's caseload also includes attending "pre-trial conferences" held by justices in matters that are complex, as well as representing the County before appeal judges in appeals of convictions from the trial level.

In addition to handling their regular caseload, the Prosecutor has worked with the POA Court administration staff to transfer responsibility for prosecution-related matters from the administration staff to Legal Services, such as the handling of evidence disclosure, witness scheduling, and routine motions. The Prosecutor has also worked to make prosecution processes more efficient, such as through handling evidence disclosure electronically, which is more efficient for the Prosecutor, court staff, defendants, and police officers. These efficiencies correspond with recent reductions in court staff of 2 FTEs.

The Prosecutor has also initiated a training program for police officers serving Grey and Bruce to assist them in adopting best practices for laying Part I charges and preparing the documentation required for their prosecution.

Legal Services is awaiting information from MAG regarding transfer of responsibility for prosecution of Part III offences to the County. The Prosecutor's role has been designed for them to prosecute both Part I and Part III offences. Additional staffing to assist with administrative and documentary matters may be required if responsibilities for Part III prosecutions are transferred, due to an expected significant increase in the volume of evidence disclosure involved in Part III charges as compared to Part I charges.

## Legal Advisory Services

Legal Services began providing internal legal advisory services within the County corporation in October 2018, immediately upon the establishment of the Department.

Services are available to County Council and to all County departments. These services range from delivery of summary legal advice to detailed assistance and support on corporate governance, negotiations, court and tribunal hearing matters, transactional matters, as well as the provision of legal advice on policy and procedure development and legislative analysis. As of September 1, 2019, approximately 120 consultations have been commenced, ranging from small matters to large ones, across all County departments.

Many legal advisory services are provided directly by the Director in their role as County Solicitor. Some are provided with some level of assistance from outside legal counsel.

For 2019/2020, after completing her term as Deputy Clerk / Legislative Coordinator, Jacquelyn Morrison will join Legal Services in her capacity as a licensed lawyer to assist the department to continue to streamline and improve legal service delivery, as well as assist with prosecution matters. Her position is expected to commence in late September and will run for an initial term of one year.

## Outside Counsel Management

Legal Services 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 matters, as well at times when Legal Services could advise on a matter but does not have the capacity to respond promptly.

Some informal management of outside legal counsel has already been established, on a case-by-case basis. To extend this process, a formal program to oversee all outside counsel will be launched soon. The first phase of this program will evaluate the work being performed by all outside counsel to ensure that the County is obtaining appropriate value from their services, and to review the different approaches taken in the use of outside counsel.

This review is expected to last for approximately six months. Once it is complete, recommendations on best practices for engaging and working with outside counsel will be brought forward to senior management for review.

## 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), 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*.

## 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 (list); CAO
- External (list)

## Appendices and Attachments

*None.*