

To:	Warden Hicks and Members of Grey County Council
Committee Date:	February 14, 2019
Subject / Report No:	LSR-CW-01-19
Title:	Appointment of Prosecutors
Prepared by:	Michael Letourneau, Director of Legal Services – County Solicitor
Reviewed by:	Kim Wingrove, Chief Administrative Officer
Lower Tier(s) Affected:	
Status:	

Recommendation

1. That the Director of Legal Services – County Solicitor be appointed as a municipal prosecutor on behalf of the County;
2. That the Director of Legal Services – County Solicitor be authorized to appoint municipal prosecutors on behalf of the County from time to time; and
3. That all such municipal prosecutors appointed hereby be authorized to exercise the lawful authority of a public prosecutor without restriction except by prosecutorial policy enacted by the Ministry of the Attorney General (“MAG”) or by County policy properly enacted in accordance with the 2000/2001 Memorandum of Agreement and Local Side Agreement between the County, the County of Bruce, and MAG and the 2000/2001 Intermunicipal Service Agreement between the County and Bruce County made pursuant to those agreements; and
4. That a By-law be prepared for consideration by County Council.

Executive Summary

Since 2001, Grey County has been responsible for handling court prosecutions of many matters arising under the *Provincial Offences Act* and the federal *Contraventions Act* under a Memorandum of Agreement (the “Memorandum”) with the Ministry of the Attorney General. Under the Memorandum and its companion agreements with the County of Bruce, Grey County prosecutes offences arising within its own boundaries, as well as within the boundaries of Bruce County.

Responsibility for these prosecutions will be transferred from outside counsel to Legal Services. Appropriate authority needs to be granted to the Director to appoint staff to carry out prosecutions, as well as to appoint outside legal counsel to prosecute where appropriate. The

Director himself also should be appointed as a prosecutor in order to assist the County's principal prosecutor when required.

Because they function as public prosecutors, the prosecutors appointed by the County require the authority to act independently in carrying out prosecutions. This is to ensure that offences are prosecuted fairly and in the interests of justice. Their authority is constrained by prosecutorial policies enacted by the Ministry of the Attorney General and any complementary policies that the County may later enact.

Background and Discussion

Under the terms of a Memorandum of Agreement (and other related agreements) regarding municipal prosecutions entered into by Grey County, Bruce County, and the Ministry of the Attorney General in 2000/2001, Grey County has been responsible for handling the prosecution of numerous charges laid by police forces within the boundaries of the two counties under Ontario's *Provincial Offences Act* and its federal counterpart, the *Contraventions Act*.

These two statutes create a structure to prosecute "regulatory offences", which include most motor-vehicle-related offences, environmental offences, municipal by-law offences, liquor offences, and many others. Punishment for regulatory offences is typically by way of fine, and imprisonment is quite rare. They are different from "true criminal offences", such as assault and theft, which are more commonly considered to be "crimes" and where imprisonment is a more common punishment.

The offences that the County has been prosecuting under the Memorandum consist largely of matters related to motor vehicle offences (under the *Highway Traffic Act* and the *Compulsory Automobile Insurance Act*), as well as offences under the *Liquor License Act*; offences under the provincial *Cannabis Control Act* and *Cannabis License Act* are expected to be prosecuted in the future. The charges for these offences are laid by police forces, and are generally known as "Part I" offences. These types of charges, prior to the Memorandum, were prosecuted through the provincial Crown Attorneys' offices; the Memorandum transferred that public prosecution responsibility to the County. The County also expects to receive a further transfer of prosecutorial responsibility later this year in respect of more complex and serious charges that are being laid by police; these are generally known as "Part III" offences.

Beyond the terms of the Memorandum, the County also prosecutes offences under its own By-Laws – especially under the County's Forest Management By-Law. The County does not, however, prosecute by-law offences arising under the by-laws of its lower-tier municipalities. These are prosecuted by the municipality, either directly or by its own legal counsel or representatives.

A core function of the County's Legal Services department is the primary handling of the County's prosecution responsibilities, both for its public prosecution duties under the Memorandum, as well as prosecution of charges under County By-Laws laid directly by our own enforcement officers. To date, County prosecutions have been handled by an outside law firm (Middlebro' & Stevens LLP of Owen Sound and Wiarton), but their retainer with the County for handling them in general will soon end.

The Legal Services department will soon be employing a full-time Provincial Offences Prosecutor to take over primary responsibility for the County's prosecutions, with the services of

outside counsel when required due to conflicts of interest and workload and scheduling issues, and with the assistance of the Director on occasion.

In order for the Prosecutor, the Director, and outside counsel to properly function as municipal prosecutors for Grey County and Bruce County, they must be formally appointed to that role. To that extent, the Director requires authorization to appoint prosecutors from both staff and outside counsel. The Director himself also needs to be appointed as a prosecutor.

These prosecutors must, by law, have authorization to carry out their prosecution functions independently and at their own discretion. This independence is a requirement both under the Memorandum with the Ministry of the Attorney General and under common law. It is the same independence granted to Crown Attorneys and prosecutors employed by the Ministry who prosecute offences in the criminal courts.

This independence permits them to carry out the common law functions of a public prosecutor. A public prosecutor is legally required to ensure that evidence of offences is presented fairly and impartially to the court, and that the accused is treated justly. The role is somewhat different from a lawyer pursuing a private client's interest; a prosecutor must act impartially, whereas a lawyer for a private client is permitted to be a "zealous advocate" for their client.

A public prosecutor's independence is not, however, absolute. They must obey the law and respect the limits of their roles. They are also governed by prosecutorial policies enacted by the Ministry of the Attorney General, as well as by policies that the County may enact that do not conflict with the law or the Ministry's policies. The Director intends to work with the selected Provincial Offences Prosecutor to develop appropriate prosecution policies for Council's consideration in the future.

Legal and Legislated Requirements

As described above.

Financial and Resource Implications

None.

Relevant Consultation

- Internal (list) – CAO, POA Court Manager
- External (list)

Appendices and Attachments

None.