



Committee Report

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| To: | Warden Hicks and Members of Grey County Council |
| Committee Date: | October 28, 2021 |
| Subject / Report No: | LSR-CW-02-21 |
| 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

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 continues to have a significant impact on Legal Services' operations. There continues to be a high pace of legislative change which must be tracked, both for its impact on County operations and for prosecution under the *Provincial Offences Act*.

Development of further support services for County departments has continued, as has advancement of prosecution initiatives to support the overall operations of the County's Provincial Offences Court. In order to keep pace with the demands of providing legal support for priority projects and ongoing operational matters some adjustments to staffing and reporting are being considered.

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

Prosecution Services

The prosecution function is carried out by 1.5 FTEs under the supervision of the County Solicitor. This is the third year of internal operations for offence prosecutions under the Provincial Offences Act (POA). Most prosecutions are for offence charges laid 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.

The prosecutors have worked with the Court Administration team to clear the backlog of Part I charges that arose when the court was closed for several months in 2020. The Court has now resumed hearings under a "remote appearance" model where all parties attend a court hearing held on the Zoom videoconference platform. While the transition to this approach has been successful, it has brought additional communications burdens. These arise in particular with respect to the "resolution first" approach, which works to contact all defendants prior to their court date to provide legally-required disclosure of prosecution evidence and to provide (where appropriate) options to resolve their matter through a guilty plea. This approach aligns with the County's goals of minimizing the time that police officers must commit to appearing as witnesses in court appearances where they are ultimately not called on to testify.

The department has also worked with the Court Administration team to implement the formal "early resolution" (ER) process provided for Part I charges under the POA. This process will create a formal option to allow defendants to resolve their Part I charges prior to trial, and will replace the current informal approach. This transition has created some additional work for department staff as part of the planning process, but its impact on department workload has not been determined. If the overall volume of defendants taking advantage of this option or directly requesting formal trials remains consistent with past years, no significant impact on staff workload will be expected. If the overall volume of defendants increases, then additional prosecution resources may be necessary to deal with the load.

The department continues to assume prosecution of charges laid by enforcement personnel of lower-tier municipalities in Grey and Bruce in respect 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)*. Similar assistance has also been extended to Public Health Grey Bruce with respect to enforcement of certain orders made by the Medical Officer of Health under the *Health Protection and Promotion Act (HPPA)* in respect of COVID-19. While this creates some additional work for department staff, there is an overall net benefit provided by the County to the lower-tier municipalities and to Public Health.

The department also 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. These discussions remain ongoing, and while some municipalities have agreed to take on these operations on a "pilot project" basis, MAG has not yet indicated when it would be ready to seek to have municipalities in general take these over nor the precise

terms of the transfer. Since this transfer would likely create additional work for the department, a specific report would be provided to Council once specific terms are provided.

Solicitor Services

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

Solicitor 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, by-law drafting, and legislative analysis.

The most impactful matter for the giving of legal advice in the preceding year remains the COVID-19 pandemic. Some of the issues reviewed by the department relate directly to the pandemic. Many of the rest have seen some sort of impact due to the pandemic.

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
- Operational development and expansion for the Grey Transit Route (GTR)
- Development of the conditional exemption framework for County Development Charges with respect to purpose-built rental developments and Community Improvement Program (CIP) supported developments
- Advising Council and the Clerk's office on the handling of a formal development charges complaint under the Development Charges Act
- Revision of the County's forest management by-law
- Low-cost loans to not-for-profit housing developers
- Enhancing naloxone distribution by County paramedics

The overall workload of the department has increased significantly, in part due to the pandemic and in part due to the continued requests for solicitor services. This is due in large part to the legal complexity in various areas of County operations, especially long-term care, paramedic services, transportation, and planning as well as the County's ongoing finance and governance obligations. The department has reached a limit on how much work it can accommodate without additional resources. At this point, the department would benefit from the introduction of a dedicated law clerk / department assistant to manage internal discussions with client departments, assist with document review and preparation, and manage logistics and budgets.

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 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 is with respect to human resources matters and insured claims. The Human Resources department continues to manage its use of external legal counsel, and any future efforts in establishing oversight in Legal Services will be done in full cooperation with the operational needs of the Human Resources department. Insured claims and the use of legal counsel continue to be managed by the County's insurers, under the oversight of the Finance department.

Both the current level of ongoing management of external counsel, and particularly the further development of oversight will benefit greatly from the addition of staff resources to manage the administrative work and communications requirements.

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.

Financial and Resource Implications

In support of the early resolution process for prosecutions, a new prosecution clerk position will be considered as part of the POA Court 2022 budget. Beginning in 2022, the POA Court Manager will take responsibility for day to day employee management for the prosecution-specific staff, with the Director retaining responsibility for the County's prosecution responsibilities under the provincial Memorandum of Understanding and supervision of prosecution operations in general. If that position is approved, the current .5 FTE in prosecution

will be reduced to .25 and that time reallocated to the provision of Solicitor Services. The current .34% of the Director's time allocated to the POA will be reduced to .25% with the difference being reallocated to support County work.

Relevant Consultation

- Internal (list): Chief Administrative Officer
- External (list)

Appendices and Attachments

None.