



INTERNAL AUDIT REPORT

Legal Services Audit

January 2019

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CONCLUSION AND SUMMARY

Improvements are required to ensure risks related to the execution of Legal Services activities are efficiently and effectively mitigated, while better supporting the City's strategic plan and corporate initiatives.

The Legal Services department has gone through significant staffing changes over the past several years at the leadership level, legal counsel and clerical positions. Both the City Solicitor and the Director, Legal Services roles are currently vacant. The majority of legal counsel staff have been in the role for less than one year, while additional positions remain vacant. Although the leadership vacancies and integration of new legal staff has created tremendous operational challenges for the department, it has also presented the City with the following opportunities:

- Reevaluating the strategic vision, mission, roles and responsibilities, and organizational placement of the department to better align with and to advance corporate objectives.
- Determining the optimal level of resources, staff complement and composition of the Legal Services department.
- Acquiring the appropriate tools and resources to improve department planning, business processes and service delivery.
- Establishing Key Performance Indicators (KPIs) to measure department performance.

Based on discussions with Legal Services staff, the corporate management team and client department representatives, there appears to be confusion regarding the role Legal Services should have within the organization. For example, there is a tendency within some client departments to place pressure on Legal Services staff to make decisions for them, while other departments feel that Legal Services unduly attempts to make decisions on behalf of management, solely based on the advice they have given. This increases the risk that initiatives will be delayed, while creating an inappropriate transfer of risk, accountability and responsibility. Clarifying the strategic role and placement of Legal Services within the organization will help ensure that the roles, responsibilities and accountability of the department is better understood, while better aligning the department to support the term of council priorities and advance corporate objectives.

In addition to reevaluating the strategic role and placement of the department, opportunities exist to reevaluate the current composition of the Legal Services department to ensure that it can deliver upon its mandate. It is unclear what methodology is being used to determine department resource requirements. Establishing formal forecasting mechanisms would help establish what the anticipated needs of the City will be for legal services. Performing an analysis to determine whether it would be more beneficial and more cost effective to bring some of the externally sourced expertise in house may help alleviate some of the ongoing budget pressures that currently exist with the use of external counsel. Optimizing the resources and composition of the Legal Services department will help reduce operational inefficiencies and better align the department to meet the growing demands of the City.

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The current tools and processes used by Legal Services do not efficiently or effectively support staff for budgeting, planning, distributing work, service delivery, and providing management oversight, all of which increases the risk of delay in responding to client requests. Securing resources for the implementation of a case management software solution would help eliminate many of the department's manual processes. Investing in such a system has the potential for significant efficiency and effectiveness gains. This may include reduced direct costs for storage and services and reduced staff time to search for items or recreating documents. Such a system would also support time docketing, which would help track and manage staff time, file status and deployment of resources within the department, while providing valuable data for future planning and management oversight purposes.

KPIs help organizations understand how well they are performing in direct relation to their strategic goals and objectives and therefore help to monitor the execution of strategy. They should clearly demonstrate the cause and effect relationship between departmental processes and outcomes to the results the City wants to achieve from the strategic plan. It helps all levels of the organization see the impact of their work on performance and trace that impact all the way up to organizational performance. This ensures everyone is working together to execute strategy and achieve high performance. Performance measures are so vital in an organization and are frequently overlooked. Often, staff believe that they don't have time to measure performance because of their current to-do lists, and their constant need to react to issues. These urgent matters are often times a product of not measuring what matters. By creating relevant KPI's, Legal Services will have better insight to improve their processes and encourages accountability.

Internal Audit will follow up on the status of outstanding Management Action Plans related to this audit and will report the status to the Finance, Administration and Audit Committee.

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BACKGROUND

The City Solicitor, acts as senior legal advisor to City Council, the Corporation of the City of Vaughan and Vaughan Public Libraries, and is responsible for both the Legal Services and Real Estate departments. It is the mandate of the Office of the City Solicitor to provide a full range of timely, accurate, relevant and strategic legal and real estate services to advance corporate objectives, legislative compliance requirements, strategic initiatives, risk management and general administrative and operational needs, using best efforts to ensure that the corporation complies with applicable laws.

The Legal Services department uses both internal and external counsel to provide a range of legal services to the entire organization, including:

- Acting as general counsel to the organization.
- Providing legal advice and support in areas such as conducting real estate, corporate/commercial transactions and related negotiations, procurement, and land development.
- Providing legal counsel acting on the City's behalf in litigation, by-law prosecutions and administrative law matters.
- Drafting by-laws, contracts and agreements.

The Legal Services department strive to provide customer focused service excellence in a manner that is effective, collaborative, strategic and innovative.

OBJECTIVES AND SCOPE

The objective of the audit was to evaluate the adequacy and effectiveness of the internal controls, processes and procedures in place to mitigate the business risks associated with services provided by the Legal Services department.

The audit approach included a review of the strategic goals, objectives and oversight of the department, review of relevant policies and procedures, use of technology, and interviews with staff and management.

The audit scope included department related activities that occurred in January 2017 to December 2018.

The audit scope did not include a review of the Real Estate Department.

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DETAILED REPORT

1. *Reevaluate the Strategic Role of Legal Services to Better Support Corporate Objectives and Decision Making*

The role of a municipal Legal Services department continues to evolve and is no longer limited to managing the legal risk associated with the various activities at the City. Legal staff need to partner with the client departments, understand the pressure points, strategy and objectives of the City and effectively communicate legal risks so that management can use the advice to inform better decisions.

Our interviews with Legal Services staff, the corporate management team and client department representatives revealed that there is a need to clarify the strategic role of Legal Services to ensure that the department is better aligned to support the term of council priorities and advance corporate objectives.

Currently, there is a tendency within some client departments to place pressure on Legal Services staff to make decisions for them, while other departments feel that Legal Services unduly attempts to make decisions on behalf of management, solely based on the advice they have given. This increases the risk that initiatives will be delayed, while creating an inappropriate transfer of risk, accountability and responsibility.

Additionally, decisions, that may have legal implications, are sometimes made by management, without first seeking legal advice. Sometimes, this is the result of client departments not knowing when to engage Legal Services. This could potentially increase the City's risk of litigation.

The Legal Services department has gone through significant staffing changes over the past several years at the leadership level, legal counsel and clerical level. Both the City Solicitor and the Director, Legal Services roles are currently vacant. The majority of legal counsel staff have been in the role for less than one year, while additional positions remain vacant.

With the current vacancy of the City Solicitor and Director of Legal Services, the Office has temporarily moved from reporting directly to the City Manager, to reporting to the Deputy City Manager of Corporate Services.

Internal Audit conducted a scan of 18 Canadian municipalities to determine if a trend exists in the reporting relationships of Legal Services in the municipal sector. Of the 18 municipalities, 9 (50%) had Legal Services reporting directly to the City Manager/Chief Administrative Officer (York Region, Richmond Hill, Markham, Ottawa, Thunder Bay, Windsor, Moncton, Calgary, Vancouver), 8 (44%) had Legal Services reporting to Corporate Services (Brampton, Mississauga, Barrie, Guelph, Kingston, Sudbury, Winnipeg, Edmonton) and one (6%) has Legal Services reporting directly to Council (City of Toronto). Based on our scan, no clear pattern was evident as to why a city chose one structure over another. However, it is our opinion that the Legal Services department should be strategically placed in a manner that will allow it to best support the strategic vision of our City.

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Although the leadership vacancies and integration of new legal staff has created tremendous operational challenges for the department over the last several months, it also presents the City with an opportunity to reevaluate the strategic vision, mission, roles and responsibilities and organizational placement of the department to better align with and to advance corporate objectives.

Recommendations

We recommend that the corporate management team, with approval from Council:

- Reevaluate the strategic role, objectives, responsibilities and accountability of Legal Services to better support corporate objectives, client departments and informed decision making.
- Operationally position the Legal Services department in a manner that will allow it to best support the City's strategic vision, client departments and corporate objectives.

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2. Determine the Optimal Level of Resources, Staff Complement and Composition of the Legal Services Department

In addition to reevaluating the strategic role and placement of the department, opportunities exist to reevaluate the current composition of the Legal Services department to ensure that it can deliver upon its mandate. It is unclear what methodology is being used to determine department resource requirements.

For example:

- What is the optimal level of leadership resources required within the department to provide direction on strategy, expected outcomes, management oversight and performance management?
- What is the optimal number of FTE's for internal counsel, legal clerks and/or administrative positions?
- What is the ideal ratio between internal counsel and legal clerks and/or administrative positions and what should the reporting relationship be?
- What is the appropriate mix between the use of internal and external resources and what should the external resources budget be?

In general, when Legal Services is unable to provide expertise on a subject matter, they utilize external counsel. Internal Audit reviewed Legal Services actual spend to budget for professional services over the past two years and determined that significantly more resources are being used than what is budgeted for:

Account	Budget	Actual	Over Budget Amount	Year
Professional Services	\$135,719	\$434,179	\$298,460	2017
Professional Services	\$205,719	\$464,522	\$258,803	2018

In addition to this, for the period of January 2017 to September 2018, Human Resources spent \$401,072 on external counsel; while the City Manager's Office spent \$33,890. The majority of these costs were related to employment relations matters, including representation in negotiations and other employment law issues.

In more simplistic terms, the City's existing professional fees budget could cover the salary of one additional internal counsel. Actual spend over the two-year period has been closer to the salary of between three and four internal counsel. No analysis has been performed to determine whether it would be more beneficial and more cost effective to bring some of the externally sourced expertise in house. In addition, Legal Services does not have any formal forecasting mechanisms in place to help establish what the anticipated needs will be for their

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services. One of the existing challenges of performing these types of analysis is the absence of the appropriate processes, tools and systems to capture and analyze this type of data (see observation #3 below for further details).

Optimizing the resources and composition of the Legal Services department will help reduce operational inefficiencies and better align the department to meet the growing demands of the City.

Recommendation

We recommend that management:

- Develop formal forecasting mechanisms to help establish what the anticipated needs will be for Legal Services.
- Determine what the ideal composition of the Legal Services department should be in order to effectively and efficiently achieve its corporate mandate and develop an implementation plan, if required.
- Conduct an analysis regarding the nature and reoccurrence of the work being assigned to external counsel to ensure that the City is getting best value for money.
- Coordinate the use of all external counsel through the Legal Services department.

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3. *Acquire the Appropriate Tools and Resources to Improve Department Planning, Business Processes and Service Delivery*

Modern case management information systems can increase operational efficiency and support risk management systems by facilitating case file activity with their built-in functionality. A case management system can generally be described as a shared database, accessible as required. The information stored in such systems can typically be highly customized and instantly retrieved.

The current tools and processes used by Legal Services do not efficiently or effectively support staff for budgeting, planning, distributing work, service delivery, and providing management oversight, all of which increases the risk of delay in responding to client requests.

The following was noted:

- Legal Services staff do not keep track of the number of hours they spend on files or department activities.
- Legal Services does not have an automated case management system. Files are currently maintained, managed and stored manually through hard copy documents.
- A central list of all active files, their current status and who the work has been assigned to is not maintained.
- Detailed file documentation standards have not been developed as to how files should be structured and the type of documents that should be stored in the various case files.
- In cases where electronic records have been created on the department's shared drive, the criteria as to who has access to the information has not been clearly defined.
- Legal Services uses the corporate Versatile system to track, manage, store and retrieve documents. Legal Services staff indicated that this system is not user friendly and has poor search and reporting capabilities. This has led to issues where archived information, that would potentially help in managing current files, is not always readily available. When the information is available, resources are being used to locate, retrieve and sort through manual files and hoping that they can find all the documents needed.

The responsibility lies with management to implement systems to track and monitor staff workloads. To be as effective as possible, Legal Services must first assess how resources are being planned for and utilized. Time docketing would help manage and track resources within the department and provide some of the data required for a less subjective measurement of efficiency, effectiveness and quality, while providing guidance for future resource requirements.

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Legal staff need access to relevant, accurate and timely information to support their activities. Implementing an automated case management system, while incorporating department standards to ensure consistency and standardization, will mitigate the risk of errors, improve efficiency and access to data and are integral to achieving the department's mandate.

Recommendations

We recommend that management:

- Implement a time docketing system to manage and track resources within the Legal Services department.
- Work with corporate partners to submit a proposal to obtain the resources necessary to acquire and implement an appropriate case management information system, based on a comprehensive needs assessment.
- Develop file documentation standards outlining templates, naming conventions, checklists and supporting procedures for each practice group.

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4. *Establish Department Policy and Procedures and Update Job Descriptions*

Internal guidance on roles and responsibilities, including policies, procedures, and job descriptions is important to clarify the division of labour and provide a roadmap for day-to-day operations and guidance for decision-making.

Our review of the ten section Legal Services Policy Manual revealed that only two sections actually refer to specific legal related operations. The remaining sections included a collection of memos, City-wide policies and by-laws.

New legal staff stated a need for guidance in helping them navigate through City processes, some of which were outside of the technical aspects of practicing law. Some staff have never worked for a municipality and felt that they needed help in understanding political and administrative processes that they had not encountered before.

Legal counsel also expressed confusion over what work was appropriate to delegate to legal support staff. Additionally, job descriptions are very general in nature and may not reflect the practice area composition of the department. A lack of clarity can lead to unequal work distribution, duplication or incomplete work.

Recommendations

We recommend that:

- Comprehensive policies, procedures and related internal controls should be clearly documented, periodically reviewed and updated.
- Job descriptions be updated to reflect appropriate roles and responsibilities.

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5. *Develop Key Performance Indicators (KPIs)*

KPIs help organizations understand how well they are performing in direct relation to their strategic goals and objectives and therefore help to monitor the execution of strategy. In an article called Measure Your Impact, Lawyer on Demand¹ states that:

“If an in-house team can implement less subjective measurements of quality through the use of KPIs with the effect that; (a) the aggregate volume of legal work being carried out within the business is sped up and/ or reduced (b) at the same time the organization’s risk profile does not increase and over time becomes more consistent and (c) legal costs remain at a level appropriate for the business, then that will be a big step in the right direction for many teams...”

Recognizing the need to develop KPI’s, Legal Services stated the following in the 2018 budget book:

“As the City is in a period of massive growth and development, requests for legal services are at an all-time high. The department is working towards establishing, monitoring and reporting on Key Performance Indicators including the establishment of service level agreements and satisfaction surveys...”

The most significant advantage inherent in an in-house staffing model is the ability of the City’s lawyers to add value to the client through their intimate familiarity with the operational affairs and legal issues of their clients. Setting standards and objectives is ineffective unless accompanied by a system to monitor performance and compare performance to the standards. Objective measurements of quality can serve to reinforce or even challenge subjective views and encourage accountability.

Recommendations

We recommend that management develop quantifiable KPI’s, that reflect the critical success factors of the department.

¹ “Measure Your Impact,” Lawyer on Demand, www.lodlaw.com/wp-content/uploads/2016/11/01-KPI-Booklet-v1.pdf

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6. *Develop a Formal Intake Process and Service Level Agreements with Client Departments*

Many organizations are using service level agreements to improve communications and manage expectations between internal departments in their organization.

Although service level agreements with client departments have been discussed in the past, they have not been implemented. In addition, Legal Services does not have a formal intake mechanism in place to deal with new requests. This has created confusion for client departments in terms of who to contact when initiating communications with Legal Services and has the risk of creating unrealistic expectations.

Currently, when a relationship is established between a department and a Legal Services employee, they tend to call the same person when assistance is needed, even if a different resource within Legal Services would be better suited to assist. Legal staff have expressed that clients have reached out to multiple lawyers with the same question. In addition, client departments often want answers immediately and Legal Services does not have sufficient time to balance priorities.

Typically, inter-department relationships that are formalized through service level agreements become more structured and roles are clearly understood. They can help define the expectations of each practice area and establish realistic goals that are acceptable for all parties.

Recommendations

We recommend that management:

- Implement a formal intake process to assist with internal resource assignment and case management.
- Develop risk-based service level agreements with the client departments which defines:
 - The services the Legal Department will provide and the required level or standard for those services.
 - An ongoing reporting mechanism for measuring the expected performance standards.

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7. Establish Guidelines for Penalty Negotiations and Reductions

Under the Administrative Monetary Penalty² system, the City can impose monetary penalties if there is a contravention of a regulation or by-law. The person/entity who receives the penalty has a right to a hearing under the City's Administrative Monetary Penalty Hearings policy.

Prior to a Monetary Penalty Hearing, the Paralegal Prosecutor meets with the person/entity to see if a settlement agreement can be reached. Generally, this is done by reducing the amount of the penalty. The amount of reduction is based on the judgement of the Paralegal Prosecutor and must be agreed to by all parties. Regardless of the agreement, the Hearings Officer may reduce or raise the amount to be paid at the hearing.

Because the Paralegal Prosecutor acts unilaterally in these cases, there is an opportunity to provide additional guidance and oversight of the negotiated settlement being offered by the City. Further, trends and issues arising from these negotiations and hearings are not being communicated back to By-Law & Compliance, Licensing & Permit Services so that they can understand the reasons and overall cost of the reduced fines.

The absence of clear guidelines for reducing monetary penalties increases the risk that persons/entities will not be treated consistently, increased financial cost to the City and reduced effectiveness of the penalty as a future deterrent.

Recommendations

We recommend that management:

- Establish guidelines for penalty negotiations based on consultation with By-Law & Compliance, Licensing & Permit Services and an analysis of trends in previous cases.
- Reporting should be developed to analyze trends in Penalty Notices issued verses penalties paid.

² Section 102.1 of the Municipal Act creates authority for municipalities to impose an administrative penalty where the municipality is satisfied that a person failed to comply with a by-law respecting the parking, standing or stopping of vehicles.

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Management Action Plan

Management agrees with the audit observations and recommendations outlined in this report.

In the ongoing effort to improve the efficiency and effectiveness of the Office of the City Solicitor, a competency-based recruitment process is currently underway. This process will consider stakeholder inputs in helping define the role of the City Solicitor, while ensuring that the key competencies for the role have been clearly defined. It is important that the person hired into the City Solicitor role is not only the most qualified candidate for the position, but also has a proven track of integrating department performance with corporate objectives.

The previous City Solicitor had retained a consultant to review workflows and workloads for the department. This report was completed in June 4th, 2017. However, the recommendations were not implemented prior to the departure of the previous City Solicitor.

Leveraging both the consultant's report and the work undertaken by Internal Audit, it is our intention to refresh the consultant's report to current state and integrating the findings from Internal Audit. Our focus is to have ready to implement recommendations for the new City Solicitor.

Corporate Services is actively supporting the Office of the City Solicitor by ensuring business continuity. We are currently recruiting for key vacant legal positions.