



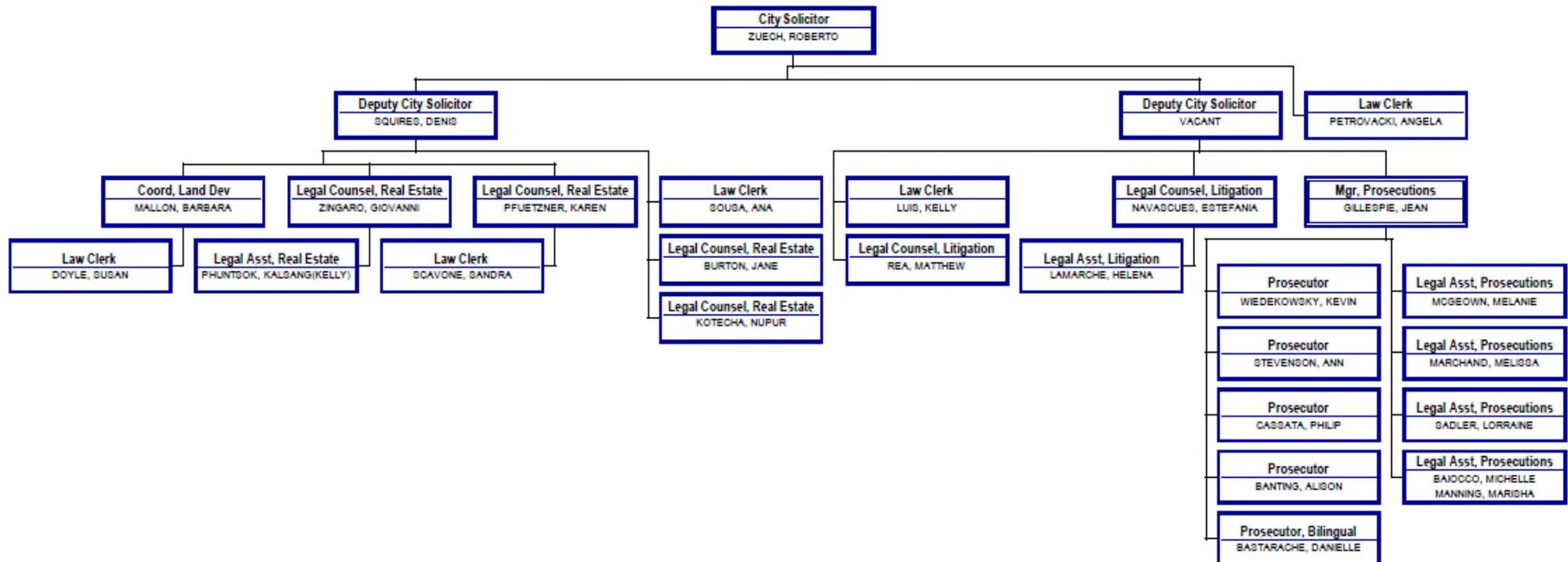
Welcome to Legal Services

Council Orientation November 27, 2014

Legal Services Organizational Chart

City of Brampton

Legal Services



INTRODUCTION / OUTLINE OF LEGAL SERVICES

Legal Services has two divisions: Litigation and Administrative Law, and Real Property and Commercial Law.

Litigation and Administrative Law Division

The Litigation and Administrative Law Division comprises two important functions:

- Litigation/Administrative Law; and
- Prosecutions.

The Civil Litigation and Administrative Law section represents the City before all levels of the Courts (Superior Court of Justice, Divisional Court, and Small Claims Court) and tribunals (Ontario Municipal Board, Ontario Human Rights Tribunal, etc.).

The Prosecutions section is responsible for prosecuting violations of all City by-law infractions (ie. Property Standards By-law, Zoning By-law, Noise By-law, etc.) and provincial infractions including: Building Code and Fire Code contraventions, and *Highway Traffic Act* tickets.

Real Property and Commercial Law Division

The Real Property, Commercial and Development Law Division is responsible for three broad areas:

- Real Property Law deals with the City's interests in land, including land acquisition, disposition of land, expropriations, and providing title opinions;
- Commercial Law involves the business activities of the City in which the group serves as a legal resource over wide range of matters including contracts, procurement and construction; and
- Development Law engages the execution, registration and responsibility for the legal implications of development agreements, and advising on legal issues related to development and municipal finance through development charges and cash in lieu obligation.

Role of City Solicitor



The City Solicitor, Legal Services

- The City Solicitor is the City's lawyer. Legal Services through the City Solicitor is responsible for the legal affairs of the Corporation and for providing professional legal advice, recommendations, and direction to Council and its administrative staff in legal matters.
- The City Solicitor has the role of building, developing, overseeing and mentoring a strong, committed legal team which through legal advice and issue identification protects and enhances the City's interests, assists in mitigating risk and supports the City's Corporate Goals.
- Legal Services works in partnerships with numerous other City Divisions to enable the execution of the City's corporate goals and strategic plan.

Legal Advice – Who is the Client?

- A lawyer's duty is to his/her client. For the City Solicitor the municipal corporation is the "client".
- Unless there is specific authority granted by Council or by legislation to a City employee, the City Solicitor receives instructions from Council, through Council direction.
- Although the City Solicitor may receive instructions from an employee of the City where the authority has been delegated by Council, the City Solicitor, in exercising his/her duties acts for the Corporation.
- Since the City Solicitor acts for the Corporation he/she may not act for or provide legal advice to individual Members of Council or employees of the City.

Receiving Legal Advice – Solicitor Client Privilege

- Legal advice provided by lawyers to clients is covered by “solicitor and client privilege”. This means that the advice is protected and will not be disclosed, except with the consent of the client. As such, any legal advice from the City’s lawyers is usually in the form of a confidential legal report, and any oral advice is usually provided *in camera*, i.e., in closed session.
- Although all meetings of Council must be open to the public, subsections 239(2) (e) and (f) of the *Municipal Act, 2001*, provide that a meeting may be closed to the public if the subject matter being considered is litigation or advice that is subject to solicitor-client privilege.

Duties of Lawyers

- The City Solicitor and the lawyers in Legal Services must abide by the *Rules of Professional Conduct* established by The Law Society of Upper Canada.
- As lawyers, we have duties to our clients, to the profession, to the Law Society, to the administration of justice, to other lawyers, and to the courts, These duties are set out in detail in the *Rules of Professional Conduct*. The duties to clients include the following:

INTEGRITY

COMPETENCE

HONESTY AND
CANDOUR

ENCOURAGE
COMPROMISE OR
SETTLEMENT

CONFIDENTIALITY

GENERAL POWERS OF MUNICIPALITIES

- Municipalities are created entirely by Provincial legislation, primarily the *Municipal Act, 2001* (the “Act”).
- The first Municipal Act was generally known as the *Baldwin Act* and dates back to 1849. The old Municipal Act developed into a large, detailed and prescriptive statute.
- As the legislation was prescriptive it required constant updating to allow municipalities to deal with emerging issues.
- The *Municipal Act, 2001* (the “Act”) removed the overly prescriptive nature of the old act and brought in broadly based and flexible areas of authority which allow municipalities to deal with a broad range of emerging municipal issues.
- Although there are broad powers within the Act, there are also specific municipal powers and rules that govern how the broad powers are to be interpreted.

Overview of General Municipal Powers

- Section 8 states that powers under the Act are to be interpreted broadly in order to allow a municipality to govern its affairs in a manner it considers appropriate and to enhance its ability to respond to municipal issues.
- Section 9 gives a municipality the power to do anything a natural person can do, but within its areas of jurisdiction.
- Section 11 (1) (deals with Upper and Lower Tier municipalities) gives a municipality the power to provide any service or thing that it considers necessary or desirable for the public.
- Section 11 (2) sets out a broad list of matters in which by-laws may be adopted:
 - governance structure,
 - accountability and transparency,
 - financial management,
 - public assets,
 - economic, social and environmental well-being,
 - health safety and well being of persons,
 - Services and things authorized under subsection (1)
 - Protection of persons and property, including consumer protection.

- Section 11 (2) sets out a broad list of matters in spheres in which by-laws may adopted:
 - Highways, including parking and traffic on highways.
 - Transportation systems, other than highways.
 - Waste management.
 - Public utilities.
 - Culture, parks, recreation and heritage.
 - Drainage and flood control, except storm sewers.
 - Structures, including fences and signs.
 - Parking, except on highways.
 - Animals.
 - Economic development services.
 - Business licensing.

Limits to the Broad Powers “Municipal Purpose”

The Act contains explicit limits on the broad powers and they include:

- the provision that municipal by-laws cannot conflict with provincial or federal legislation;
- the sphere may not be subject to procedural requirements and other limitations existing in other statutes;
- in six of the spheres, municipalities are prohibited from regulating non-municipal systems, and
- in two-tier systems, municipalities are prohibited from regulating an activity of the other tier that is authorized by the sphere.

In addition to the limits in the Act the courts have found that the broad open ended provisions do not confer unlimited power. In several cases the courts have found that at its core a by-law must have a “municipal purpose”. The recent case of *Eng v. Toronto*, where Toronto’s shark fin by-law was successfully challenged in the courts is a reminder of the limits to the broad powers.

Specific Municipal Powers

In addition to the broad powers there are specific powers in Part III of the Act in the following areas:

Highways

Public Utilities

Culture, Parks, Recreation and Heritage

Transportation

Waste Management

Drainage and Flood Control (except storm sewers)

Structures, including Fences and Signs

Economic Development Services

Health, Safety and Nuisance

Parking (except on highways)

Animals

Natural Environment

Annual Farm Dues

Closing of Retail Business Establishments

Why are there specific powers in the Act? Why don't the broad powers cover everything?

- The specific power may be in addition to the broad powers (e.g. the specific power may give a municipality a right to enter property), or may give one tier authority with respect to another tier.
- The specific power may give one tier exclusive authority.
- The specific authority may clarify the scope of the broad powers.
- The specific power may relate to a financial matter excluded by section 17 (Restrictions on financial matters).

Accessing eLaws Ontario

- Enter e-Laws in browser
- Under explore e-laws - click on current consolidated law
- Select a letter to get all current consolidated statutes beginning with that letter

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Letter [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)

Select a letter to get all Current Consolidated Statutes beginning with that letter and their associated Regulations.

Note: If you are looking for a Statute that has been enacted or a Regulation that has been filed in the past week, check [Source Law](#).

- Select the statute from the list or click on the “” symbol to the left of the statute name to see a list of regulations and select a regulation from the list

Found 62 items Page 1 of 1 Viewing 1 to 62

Current Consolidated Law (HTML)	Download	Legislative History
 Major-General Sir Isaac Brock Day Act, 2012, S.O. 2012, c. 2		H
 Management Board of Cabinet Act, R.S.O. 1990, c. M.1		H
 Mandatory Blood Testing Act, 2006, S.O. 2006, c. 26		H
 Mandatory Gunshot Wounds Reporting Act, 2005, S.O. 2005, c. 9		H
 Marine Insurance Act, R.S.O. 1990, c. M.2		H
 Marriage Act, R.S.O. 1990, c. M.3		H
 Massage Therapy Act, 1991, S.O. 1991, c. 27		H
 McMichael Canadian Art Collection Act, R.S.O. 1990, c. M.4		H

Municipal Conflict of Interest Act R.S.O. 1990, c. M.50

Power of judge to declare seat vacant, disqualify member and require restitution

10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,

(a) shall, in the case of a member, declare the seat of the member vacant; and

(b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and

(c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

Municipal Conflict of Interest Act

R.S.O. 1990, c. M.50

Saving by reason of inadvertence or error

(2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1).

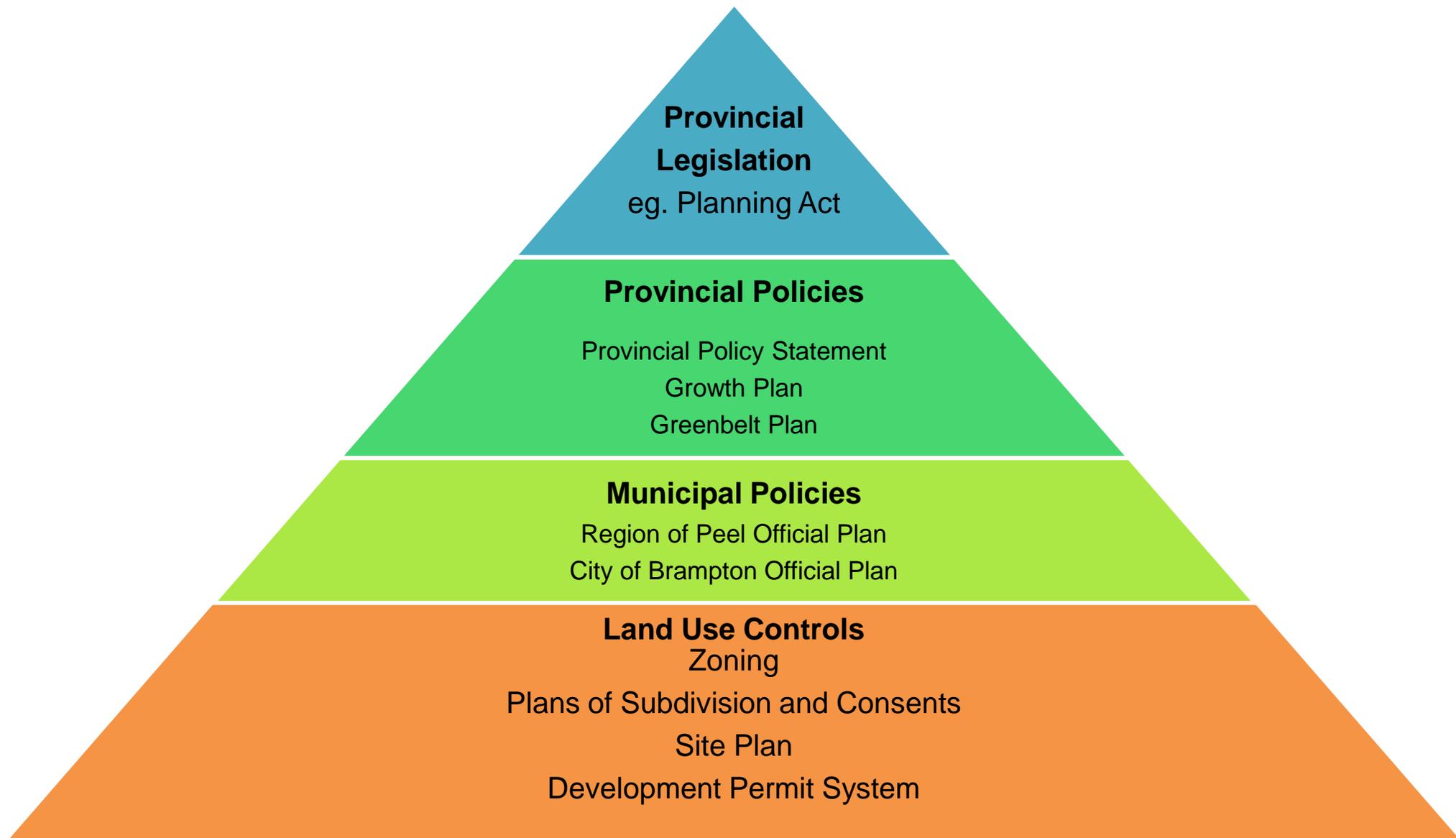
Member not to be suspended

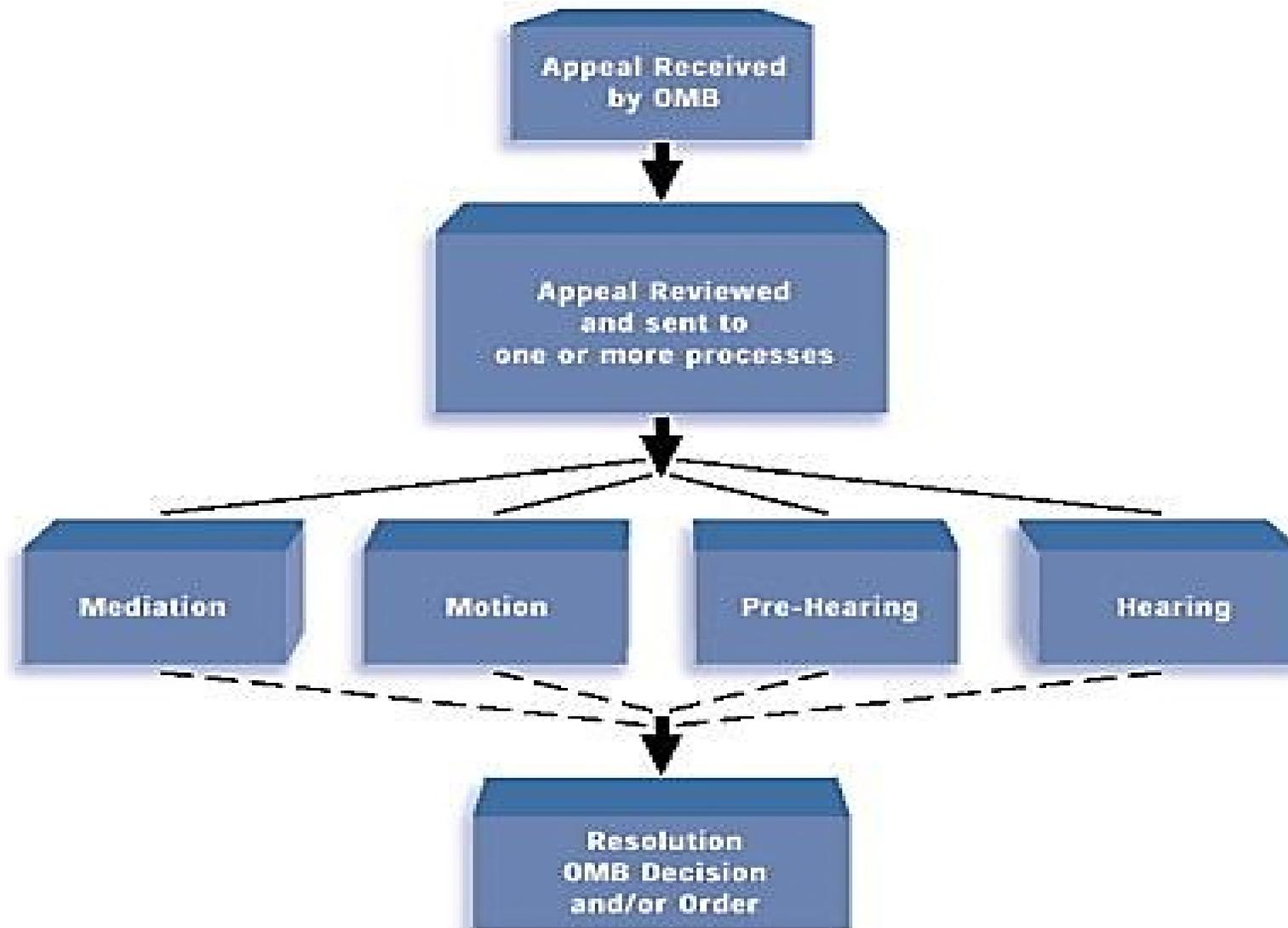
(3) The authority to disqualify a member in subsection (1) does not include the right to suspend a member.

PLANNING APPEALS AND THE ONTARIO MUNICIPAL BOARD

- ❖ **What is the Ontario Municipal Board?**
- ❖ **What is the OMB hearing process?**
- ❖ **Do council decisions impact OMB proceedings?**
- ❖ **When does legal staff report to council on OMB matters?**

ONTARIO PLANNING FRAMEWORK





*Screen shot from OMB website: https://www.omb.gov.on.ca/english/OMBInformation/OMB_Process_Chart.html

TIMING FOR COUNCIL DECISIONS ON PLANNING ACT APPLICATIONS

- An applicant may appeal to the OMB if the City does not make a decision (approval or refusal) within the following timelines:
 - Official Plan Amendment – 180 days
 - Zoning By-law Amendment – 120 days
 - Draft Plan of Subdivision – 180 days
 - Consent – 90 days
 - Site Plan – 30 days
- Section 2.1 of the *Planning Act* requires the OMB to have regard to a Council decision. The City will not benefit from this provision if a decision on a planning application is not made within the required timelines.

Development Law Group

What do we do?

The Development Law group is responsible for documenting the rights and obligations of both the City and the Developer, in the context of a development approval.

How do we do this?

- Review development approvals
- Prepare agreements
- Registration of site plan agreements and subdivisions

Types and Legal Authority for Development approvals:

➤ S.41 Planning Act: Site Plan

- ❖ All of Brampton is subject to site plan control pursuant to City By-law
- ❖ Building permits cannot be issued (with limited exceptions) without site plan approval
- ❖ The City may issue an approval (of plans and drawings) subject to conditions
- ❖ Conditions are limited to the exterior layout and design of the site
- ❖ A site plan agreement may be required and when executed and registered against the lands binds the current and all future owners

- S. 51 Planning Act: Subdivision Approval
 - ❖ Planning Act prohibits lot creation without municipal approval
 - ❖ 3 new lots or less may be approved (consent to severance) by the Committee of Adjustment
 - ❖ Everything else requires a plan of subdivision
 - ❖ Subdivision approval may be issued subject to conditions - the City has broad authority to impose conditions which may include: servicing and financial requirements; land conveyances including parkland or CIL; environmental requirements; such other requirements that are in the public interest.

How do we document the rights and obligations of both the City and the Developer ?

➤ Site Plan:

- ❖ Approval memo is issued to Legal Services requiring that a site plan agreement be entered into between the Developer and City
- ❖ The conditions of approval are reviewed and incorporated into an agreement
- ❖ Title to the lands is investigated and cleared to our satisfaction
- ❖ The agreement is circulated, signed, and is registered on title

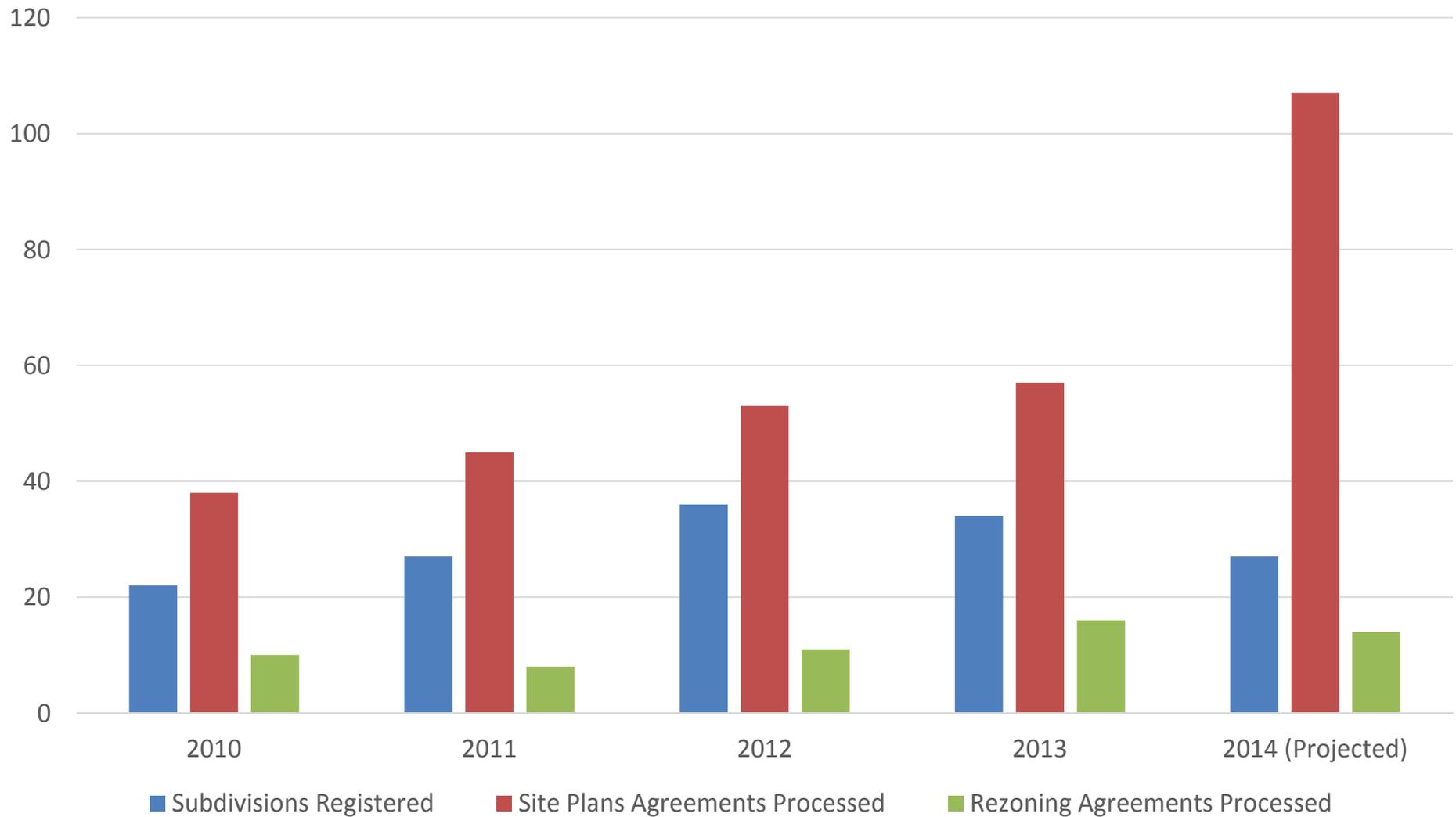
➤ Subdivision:

- ❖ Draft Subdivision Approval (including conditions) is circulated to Legal Services requiring that a subdivision agreement be entered into between the Developer and City, and upon clearance of all conditions, that the plan be given final approval and registered.
- ❖ The conditions of approval, including any special requirements as are provided by outside agencies and City departments, are reviewed and incorporated into a subdivision agreement which also includes various legal, financial, and engineering requirements.
- ❖ The agreement is circulated for comment by outside agencies and internal departments
- ❖ Title to the lands is investigated and cleared to our satisfaction
- ❖ The subdivision agreement is circulated and is signed by the Developer, City and Region.

➤ Subdivision Cont. :

- ❖ The final plan of subdivision is reviewed and approved by the City
- ❖ Legal Services arranges for the registration of the plan of subdivision and associated documents including the subdivision agreement
- ❖ All land conveyances and other legal requirements are completed to our satisfaction before the plan of subdivision is opened up to sales

Subdivision and Site Plan Approvals



Miscellaneous matters:

- ❖ Rezoning Agreements
- ❖ Municipal Servicing Agreements
- ❖ Development Charge Credit Agreements
- ❖ Condominium approvals review and compliance
- ❖ General Legal Advice to client departments and Council re development law

PROSECUTIONS

Reports to the Deputy City
Solicitor for Litigation and
Administrative Law

The Prosecutions office is comprised of one Manager, 5 Prosecutors and 4 Legal Assistants.

- All Prosecutors, one Legal Assistant and the Manager are all licensed by the Law Society of Upper Canada.
- 6 are licensed Paralegals and our bilingual Prosecutor is a lawyer.

- We prosecute quasi criminal matters pursuant to the Provincial Offences Act under Part I, Part II and Part III of the act.
 - ❖ Part I charges are known as tickets such as speeding, no seatbelt or careless driving. These can be paid out of court or the defendant can book either an Early Resolution meeting with a prosecutor to try to resolve them or a trial to dispute them.
 - ❖ Part II charges are parking tickets and as of June 2nd, 2014, are for charges with fines above \$100. These can be paid out of court or the defendant can book a trial to dispute them. (All other parking offences are dealt with under the new Administrative Monetary Penalty System)
 - ❖ Part III charges are issued by way of summons and the defendants must come to court. These include City By-laws, Building Code Act and Fire Protection and Prevention Act offences.

- In 1999, Ministry of the Attorney General began downloading the administration and prosecution of Part I charges to municipalities and Brampton was one of the first cities to take on the Part I charges.
- A Memorandum of Understanding was signed by the Province and City at the time of transfer.
- M.O.U. spells out exactly which charges are downloaded as well as expectations on education, conflicts, reporting issues and interference. COB is bound by this M.O.U.
- Under the M.O.U. all prosecution files are confidential and cannot be discussed with anyone other than the defendant, his/her counsel or the Enforcement officer.
- Any interference, by way of comments, actions or questions from anyone other than the defendant, his/her counsel or Enforcement officer must be reported to the local Crown Attorney and in the yearly report to the Ministry of the Attorney General.

2013 Stats

- Prosecuted a total of 43,741 charges
- Total number of defendants - 34,221
- Total number PRP HTA trials – 21,439
- Total number PRP HTA Early Resolution meetings – 15,156
 - Total number of municipal trials – 4,454
 - Total number of parking tickets – 2,692

- In addition to prosecuting offences, our prosecutors represent the City before the Brampton Appeal Tribunal, the Property Standards Appeal Tribunal, the Ontario Municipal Board and Small Claims Court.
- Prosecutions also provides training in evidence and court preparation to Peel Regional Police, By-law Enforcement officers, Property Standards officers, Animal Services officers, Building inspectors and Fire Prevention officers.