

Table GA-8 – Policy Number: GA-8 – Policy Name: Legal Services

GA-8 LEGAL SERVICES	
LEGISLATIVE REFERENCE / AUTHORITY	<i>Police Services Act, sections 37, Community Safety and Policing Act, 2019, section 46</i> <i>Audit of OPS' Response to the Convoy Protest – The Role of the Ottawa Police Services Board, Recommendation No. 6</i>
DATE APPROVED	1996 (as part of FAP Manual)
DATE REVIEWED	2007, 2010, 2013, 2015, 2017, <u>2023</u> , <u>2024?</u>
DATES AMENDED	24 September 2007, 01 November 2010, 26 October 2015, 27 February 2017, <u>2024?</u>
DATE TO BE REVIEWED	2026 9
REPORTING REQUIREMENT	Quarterly reporting to Board

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LEGISLATIVE REFERENCE / AUTHORITY

~~Section 37 of the Police Services Act states that a board shall establish its own rules and procedures in performing its duties under the Act~~Section 46 of the *Community Safety and Policing Act, 2019*, states that a board shall establish its own rules and procedures in performing its duties under the Act and its regulations. This policy provides direction with regard to the provision of legal services required by the Board, including delegations of ~~responsibility~~ authority.

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BOARD POLICY

SECTION 1 – CONFLICT OF INTEREST

This section applies in the circumstance that the City Solicitor, or another lawyer employed by the City of Ottawa, is acting as the Board Solicitor. The Board Solicitor shall, at all times when acting for and providing advice or counsel to the Board, comply

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with their duties to the Board as a client, including their duty of loyalty, as set out in the common law and the Rules of Professional Conduct.

The Board and the Board Solicitor shall be vigilant in identifying any conflicts of interest, actual and/or perceived, as between the Board and the City of Ottawa.

The following section is intended to provide examples to the Board and the Board Solicitor, of instances where a conflict of interest, actual and/or perceived, between the Board and the City of Ottawa arises:

- In a dispute where the Board and the City of Ottawa have opposing legal interests;
- In a dispute, where it is reasonably foreseeable that the legal interests of the Board and the City of Ottawa will diverge in the future;
- In separate but related matters involving the Board and the City of Ottawa where their legal interests are in conflict or potentially in conflict;
- In a situation where the Board and the City of Ottawa may have differing legal positions regarding the discharge of their respective duties and responsibilities; or
- In any other matters where the lawyer's duties owed to the Board and to the City of Ottawa conflict.

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When the Board Solicitor identifies a conflict of interest, actual or perceived, they shall promptly disclose the existence of the conflict of interest to the Board Chair.

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Where a Board Member identifies a conflict of interest, actual or perceived for the Board Solicitor, the Board Member shall promptly disclose the existence of the conflict of interest to the Chair or, in the context of a meeting, raise a point of order.

Upon receipt of a disclosure of a conflict of interest involving the Board Solicitor, the Chair will consider what options, or combination of options, if any, may be taken to resolve or mitigate the conflict, actual or perceived, so it does not pose unacceptable risk to the Board. Such options might include (but are not limited to):

- imposing additional oversight;
- limiting the Board Solicitor to providing general information concerning a particular matter, as opposed to providing legal advice;
- taking some other steps to limit influence on decision-making;
- placing restrictions on access to information;
- excluding the Board Solicitor from part of a meeting dealing with the issue; or
- requesting a matter be reassigned to another legal counsel.

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Where time permits, the Board Chair may solicit the Board for their input on the continued involvement of the Board Solicitor.

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Nothing in this Policy diminishes the Board Solicitor's professional obligations as set out in the common law and the Rules of Professional Conduct of the Law Society of Ontario.

Nothing in this Policy purports to direct how the City of Ottawa might deal with issues of conflict of interest.

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SECTION 24 - LITIGATION

24.1 GENERAL AUTHORITY

-1. ~~The~~ BOARD

As a normal consequence of its operations and the exercise of its responsibilities, the Board receives claims and is involved as a party or otherwise appears in proceedings before various courts and administrative tribunals~~is involved in litigation both as Plaintiff and Defendant before the Courts and various administrative tribunals.~~ The Board has overriding authority to ~~commence, manage and settle all legal matters~~all claims and proceedings involving the Ottawa Police Service. For administrative and other reasons, the Board has delegated its authority over a variety of ~~legal~~ such matters as set out in this policy.

-2. BOARD SOLICITOR

The Board Solicitor has general authority ~~to manage all claims or proceedings brought by the Board or against the Board and/or the Ottawa Police Service and/or members of the Ottawa Police Service in the course of their employment, subject to the policies and instructions as may be issued by the Board from time to time.~~ In the management of all claims and proceedings, the Board Solicitor is to use the most effective and efficient combination of internal and external legal service providers as required.~~supervise the defence, prosecution and conduct of all matters or actions brought by or against the Board, subject to such instructions as may be issued by the Board from time to time.~~ In the conduct of such litigation, the Board Solicitor is to use the most efficient combination of staff and external legal services as required to represent and defend the interests of the Board in each issue at hand.

Notwithstanding any delegation of authority in this policy, the Board Solicitor shall seek direction from the Board in any situation in which the Board Solicitor feels it is appropriate or desirable to do so.

3. EXTERNAL LEGAL SERVICE PROVIDERS

In the event that the Board determines the Board Solicitor may not act for the Board due to a conflict of interest, the Board may directly retain external legal service providers in litigated matters involving the Board, the Ottawa Police Service or a member of the Ottawa Police Service in the course of their duties. Such legal service providers will be retained by the Board in writing, in advance of acting for the Board with respect to any matter. The written retainer will specify the scope of the retainer and from whom the external legal service provider may take instructions.

2.2 COMMUNICATIONS BETWEEN CHIEF AND BOARD

1. NOTICE

The Chief of Police shall advise the Board and/or the Board Solicitor of any claim or proceeding against the Board, the Ottawa Police Service, and/or a member of the Ottawa Police Service (including the Chief of Police) acting in the course of their employment, that is brought to the attention of the Ottawa Police Service.

The Board and/or Board Solicitor shall advise the Chief of Police of any claim or proceeding brought by the Board or against the Board and/or the Ottawa Police Service and/or a member of Ottawa Police Service (including the Chief of Police) acting in the course of their employment.

2. CONSULTATION

In the case of claim or actions brought by the Board or against the Ottawa Police Service Board, Ottawa Police Service, and/or a member of the Ottawa Police Service acting in the course of their employment, the Board Solicitor and/or Board shall offer the Chief of Police an opportunity to provide input for consideration in the management of the claim or proceeding, including input into any proposed settlement.

3. DISAGREEMENT

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When consultation between the Board Solicitor and Chief of Police does not result in agreement on the course of action to be taken, the matter shall be referred to the Board for resolution.

2.3 REPRESENTATION IN DIFFERENT JURISDICTIONS

~~.3 Chief of Police~~

~~The Board Solicitor shall advise the Chief of Police of the defence, prosecution, conduct, or settlement of any matter or action brought by or against the Board, and ensure the Chief of Police has an opportunity to provide input for consideration should he/she wish. Similarly, the Chief of Police shall advise the Board Solicitor of any action brought to his/her attention.~~

~~.4 Disagreement~~

~~Notwithstanding any other provision, when consultation between the Board Solicitor and Chief of Police is warranted and such consultation does not result in agreement on the course of action to be taken, the matter shall be referred to the Board for resolution.~~

~~.5 Option~~

~~Notwithstanding any delegation of authority in this policy, the Board Solicitor may seek direction from the Board in any situation in which the Board Solicitor feels it is appropriate or desirable to do so.~~

1.4.2 SMALL CLAIMS COURT

~~The Small Claims Court exercises jurisdiction over minor monetary claims subject to a maximum amount, which is currently \$35,000. The Board Solicitor shall have authority to commence or defend actions in small claims court and to take such steps, including all interim proceedings, as may be considered necessary or proper and/or otherwise represent the Board's interests in all matters within the jurisdiction of the Small Claims Court.~~

~~The Small Claims Court exercises jurisdiction over minor claims subject to a maximum amount, which is currently \$25,000. The Board Solicitor shall have authority to commence, defend, settle and abandon all matters within the jurisdiction of the Small Claims Court.~~

2.4.3 ONTARIO COURT OF JUSTICE

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The Ontario Court of Justice is the forum for the prosecution of by-law offences as well as offences governed by the Provincial Offences Act. The Board Solicitor shall have authority to commence or defend all matters in the Ontario Court of Justice and to take such steps, including all interim proceedings, as may be considered necessary or proper and/or otherwise represent the Board's interests in all matters within the jurisdiction of the Ontario Court of Justice.~~The Ontario Court of Justice, formerly the Ontario Court (Provincial Division), is the forum for the prosecution of by-law offences as well as offences governed by the *Provincial Offences Act*. The Board Solicitor shall have authority to commence, defend, settle and abandon all matters within the jurisdiction of the Ontario Court of Justice.~~

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3.4.4 SUPERIOR COURT OF JUSTICE

The Superior Court of Justice is the largest trial court in Ontario and includes two additional branches, Divisional Court and Small Claims Court.

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The jurisdiction of the Small Claims Court is described in subsection 2.3.1. The Divisional Court considers matters of appeal and judicial review which are described in subsection 2.3.6.

Proceedings are commenced in the Superior Court of Justice as actions or applications.

The Board Solicitor is authorized to conduct the defence of all actions and applications for damages and other relief in the Superior Court of Justice and to take such steps, including all interim proceedings, as may be considered necessary or proper.

The Board Solicitor is authorized to commence and prosecute all actions for damages and other relief in the Superior Court of Justice when the amount at issue is expected to be less than \$250,000.00 and to take such steps, including all interim proceedings, as may be considered necessary or proper.

The approval of the Board is required to commence all other actions and applications in the Superior Court of Justice.~~The Superior Court of Justice, formerly the Ontario Court (General Division), is generally the Trial Court or Court of first instance and includes two branches, Divisional Court and Small Claims Court. The jurisdiction of the Small Claims Court is described in~~

~~subsection 1.2. The Divisional Court considers matters of appeal and judicial review.~~

~~Proceedings in the Superior Court of Justice are initiated either by Statement of Claim or by way of Application.~~

~~The Board Solicitor is authorized to conduct the defence of all actions and to take such steps, including all interim proceedings, as may be considered necessary or proper.~~

~~The Board Solicitor, in consultation with the Chief of Police, is authorized to commence and prosecute all actions for damages and other relief when the amount at issue is expected to be less than \$250,000.00 and to take such steps, including all interim proceedings, as may be considered necessary or proper.~~

~~The approval of the Board is required to commence all other actions in the Superior Court of Justice.~~

4.4.5 FEDERAL COURT

The Board Solicitor is authorized to conduct the defence of all actions and applications in the Federal Court and to take such steps, including all interim proceedings, as may be considered necessary or proper and to otherwise represent the Board's interests before the Federal Court.

The approval of the Board is required to commence any action and/or application in the Federal Court. All legal matters to be commenced in the Federal Court shall be approved by the Board.

5. ADMINISTRATIVE TRIBUNALS

This section applies to hearings before the Ontario Labour Relations Board, Human Rights Tribunal of Ontario, Ontario Civilian Police Commission, the Ontario Police Arbitration and Adjudication Commission, Coroner's Inquests and other administrative tribunals. Arbitration matters are also included.

The Board Solicitor shall have authority to commence and defend applications and to take such steps, including all interim proceedings, as may be considered necessary or proper and to otherwise represent the Board's interests in all matters before administrative tribunals.

6. APPEALS

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The Board Solicitor is authorized to conduct the defence of all appeals, including all interim proceedings, as may be considered necessary or proper and to otherwise represent the Board's interests in defence of an appeal or an application for judicial review.

The Board Solicitor shall have the authority to commence an appeal of any decision of an administrative tribunal where the appeal lies to another administrative tribunal.

The Board Solicitor shall have the authority to commence judicial review of decisions of administrative tribunals that relate to labour relations.

The Board's approval is required to commence all other appeals and all other applications for judicial review of the decisions of administrative tribunals.

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2.4 AUTHORITY FOR SETTLEMENTS

The Board Solicitor is authorized to settle or abandon any claim or proceeding where the amount claimed by or to be paid by the Board does not exceed \$250,000.

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2.4.5 UNCOLLECTIBLE AMOUNTS

1. Where, in the opinion of the Board Solicitor, a claim cannot be supported by legal principles, the Board Solicitor is authorized to abandon and write off the claim.

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2. Where the Board Solicitor deems an amount or claim to be uncollectible, in whole or in part, and the amount or claim or part thereof, exclusive of interest, does not exceed the amount stated in subsection 2.4, the Board Solicitor is authorized to abandon and write off the claim.

2.6 RELATED MATTERS AUTHORITY

1. In exercising the authority granted by this chapter policy, the Board Solicitor shall have authority to:

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a. Payment of Settlement Funds or Judgments, Payment of Expenses

Authorize the payment of settlement funds or judgments that do not exceed the amount stated in subsection 2.4.

Authorize the payment of all expenses related to the conduct of any action or matter and the payment of any costs awarded against the Board.

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b. Payment of Expenses

Authorize the payment of all expenses related to the management of any claim or proceeding and the payment of any costs awarded against the Board.

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.c2. Execution of Documents

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Execute all documents required to conduct any action, or conclude the settlement of any action or matter.

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.d3. Enforcement of Judicial Rulings

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Take all steps required to enforce orders, decisions, awards, and judgements.

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24.7 Exceptional Circumstances

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Where time constraints or other circumstances will not allow for the required authority granting procedures to be followed with respect to any legal matter, the Board Solicitor shall have the authority to take the appropriate action and report such action to the Board at the earliest opportunity.

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2.7 REPORTING TO THE BOARD

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SECTION 2—SETTLEMENTS

2.1—SMALL CLAIMS COURT

~~The Board Solicitor shall have authority to settle or abandon all Small Claims Court actions.~~

2.2—ALL OTHER COURTS

.1 Board Solicitor

~~The Board Solicitor, in consultation with the Chief of Police, shall have authority to settle any action where the amount to be paid to or paid by the Board does not exceed \$250,000.~~

.2 The Board

~~Subject to subsection 2.2.1, the Board shall approve the settlement of all actions and claims.~~

SECTION 3—UNCOLLECTIBLE AMOUNTS

3.1 ~~Where, in the opinion of the Board Solicitor, a claim cannot be supported by legal principles, the Board Solicitor shall have the authority to abandon and write off the claim.~~

~~3.2 — Where the Board Solicitor deems an amount or claim to be uncollectible, in whole or in part, and the amount or claim or part thereof, exclusive of interest, does not exceed the amount stated in subsection 2.2.1, the Board Solicitor shall have authority to abandon and write off the claim.~~

~~SECTION 4 — APPEALS~~

~~4.1 — SMALL CLAIMS COURT~~

~~The Board Solicitor shall have authority to appeal decisions of the Small Claims Court and Ontario Court of Justice.~~

~~4.2 — ALL OTHER COURTS~~

~~.1 — The Board~~

~~The Board shall authorize all appeals or applications for judicial review of decisions of all courts other than those specified in subsection 4.1.~~

~~.2 — Board Solicitor~~

~~Defence of appeals or applications for judicial review do not require the approval of the Board; however, they shall be reported to the Board for information.~~

~~SECTION 5 — ADMINISTRATIVE TRIBUNALS~~

~~5.1 — JURISDICTION~~

~~This section applies to hearings before the Ontario Labour Relations Board, Ontario Civilian Police Commission, Coroner's Inquests and other administrative tribunals. Arbitration matters are also included.~~

~~5.2 — AUTHORITY~~

~~The Board Solicitor shall have authority to make applications, conduct hearings, represent the Board's interests and take objection to all matters brought before administrative tribunals.~~

~~5.3 — APPEALS~~

~~The Board Solicitor shall have the authority to appeal any decision of an administrative tribunal where the appeal lies to another administrative tribunal. The Board Solicitor shall have the authority to commence judicial review of decisions of administrative tribunals that relate to labour relations. The Board shall authorize all other appeals or applications for judicial review of the decisions of administrative tribunals.~~

SECTION 6 — REPORTING TO THE BOARD

6.4 The Board Solicitor shall submit a report to the Board on a quarterly basis that includes statistical information and a concise analysis of trends on:

- ~~.1~~ positive and negative variances against the approved budget;
- ~~.2~~ all claims or actions filed against the Board including how many have been filed, how many are outstanding, how many have been settled, the nature of them (categorized by type), and the cost of settlements;
- ~~.3~~ the number, cost and outcome of all appeals and applications for judicial review;
- ~~.4~~ requests for legal indemnification and payment of legal indemnification accounts; ~~and~~
- ~~.5~~ any issues of significance the Board should be advised of.

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