



Middlesex County
Barrister &
Solicitor's Office

LOCAL COUNCIL DAY 2023





Middlesex County
Barrister &
Solicitor's Office

**Wayne Meagher (“Ma-har”)
Director of Legal Services**



What is the MCBSO? What does it do, generally?

a specialist municipal legal firm which provides:

- ◆ legal advice and representation to each of the eight lower-tier municipalities located within the geographic boundary of Middlesex County at an at cost basis, when those corporations retain the Middlesex County Barrister & Solicitor's Office ("MCBSO")

municipally encountered issue or problem?

we have the answer

Local Loyalty and Dedication

- ◇ owned by the County? Yes
- ◇ always acts for the County? No
- ◇ Only difference for you in using our firm and an outside firm, is that you are paying 'at cost' rates instead of what I would have charged you when I was outside

Local Loyalty and Dedication cont...

- ◇ when the MCBSO acts for a local municipality, it is that municipality's corporate and/or litigation counsel
- ◇ appropriate professional firewalls in place in accordance with Law Society rules
- ◇ no reporting to the County Municipal Corporation on local particulars
- ◇ report directly to local Council and CAO

not “County Legal”, please

- ◇ so please refer to us as “MCBSO” and not “County Legal”
- ◇ in legal proceeding filings and court documents, it has been necessary to differentiate the Firm from the County when it is acting for a local municipality:

LITIGANT v. LOCAL MUNICIPALITY

Wayne Meagher (LSO # _____)

MIDDLESEX COUNTY BARRISTER & SOLICITOR’S OFFICE

Address

Counsel for the Respondent, Corporation of the Municipality of the “Local Municipality”

use of MCBSO:

- ◇ has prevented courts, tribunals, opposing parties, our clients and the Land Registry Office from being confused on who we are and who we acting for at any given time
- ◇ prevents mix-ups, in the mail and otherwise

Why and How Created?

- ◇ Can't discuss without introducing you to me a little
- ◇ Prior experience necessary

Lifetime of dedication to create this Office

- ◇ started in high school through undergrad with grades, LSAT, law school, and the Bar, gaining industry specialist status, MLDAO, IMLA, and law school speaker



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◇ **in Law School Criminal Law Work**

- ◇ criminal bail hearings, criminal due process appeals and completing commercial, business, employment, wsib, and real estate work
- ◇ on you feet
- ◇ litigation
- ◇ prep for quasi-criminal prosecutions

◇ **Municipal and Planning Law Specialist:**

- ◇ **Since 2007**



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- ◇ **Articling and Private Practice:**
 - ◇ **National Law Firm, Miller Thomson LLP (Kitchener/Waterloo & Toronto)**
 - ◇ **private practice for both developers, homebuilders, and municipalities, both for and against municipalities, urban and rural mix**
 - ◇ **OLT litigation, municipal and planning, employment, commercial, business, constitutional, and insurance, provincial offences practice**
 - ◇ **Attending to all the corporate business needs and risk management of clients**



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- ◇ **Assistant City Solicitor, City of Cambridge**
 - ◇ Reduced outsourcing (OLT Litigation, All Tribunal Hearings, Commercial Litigation, Prosecutions, and Arbitrations)
 - ◇ Professionalize/reform Procurement, HR, Engineering, Planning, Prosecutions product of Municipality

- ◇ **MCBSO (2012-present):**
 - ◇ established MCBSO in 2012 to operate as a full-service law firm, reduce outsourcing at the County level, and also provide best value for money services to local municipalities
 - ◇ that is what we have done

Change

- ◇ over years, Council compositions change
- ◇ municipal staff leaders change

Director of Legal Services Role

- ◇ involves maintaining quality control of the MCBSO's legal services provided to the local municipalities
- ◇ which requires an introduction to those who are now

What did we do for you in 2022-23?

- ◇ provision of daily and essential legally related corporate/business, procedural, risk management, planning, development, building, real estate, engineering/public works, employment law, social services, corporate procedural, constitutional, insurance, technology and privacy related legal advice to your Councils, local boards, department heads, managers and staff, when retained
- ◇ found legal solutions to the most challenging issues that face modern-day municipal corporations
- ◇ litigation successes at Ontario Land Tribunal, defending zoning by-law amendments, draft plan conditions, accessory buildings, density, consents, infill and other matters

What did we do for you in 2022-23 cont...

- ◇ **litigation success at the Superior Court establishing property ownership when it was in question and defending municipal road allowance particulars, confidentiality/legal privilege arguments, and liability matters**
- ◇ **helped municipalities through a difficult year of statutory change (i.e. understanding and adapting to Bill 109, Bill 23, and other statutory/regulatory changes)**
- ◇ **furthered development and growth of local municipalities through subdivision agreements, site plan control agreements, severance agreements, development charge related agreements, and conducting real estate transactions and registrations in a professional manner while working with developers through those processes**
 - ◇ **developed a specialty in legally getting serving into areas where it did not previously exist**
- ◇ **served Prosecutor (Provincial Offences) role for you with success**
 - ◇ **delegated much of this role to David Samuels**
- ◇ **Professionalized overall admin product**

Full Service Law Firm

- ◇ Most in-house departments are solicitor work only
- ◇ Not how MCBSO has been built
- ◇ MCBSO has been built with providing more
- ◇ Barrister's Work (Litigation): Advise and litigate all municipally related disputes
- ◇ Risk Management: Advise Councils, CAOs, Department Heads etc. on responsibilities, legislation, policies, rules etc. on a daily basis, minimizing risk and litigation
- ◇ Solicitor's Work (Draft Documents): Negotiate/draft any necessary contracts, licenses, leases, by-laws, policies, procurement documents, memoranda and other necessary corporate documents
- ◇ Subjects: planning and development (including OLT Hearings), *Municipal Act* rules, environmental/energy law (including Energy Board and Environmental Review Tribunal Hearings), highways, construction, contracts, by-laws, social services delivery, employment/labour/human resources law, liability/insurance, real estate, technology, privacy/confidentiality, municipal conflicts of interest, and corporate procedure, etc.
- ◇ Leaves the MCBSO with a number of specialty municipal roles:

Legal Advice Advisory Role

Advise on subjects that include but are not limited to:

- Planning and development;
- Environmental/energy law;
- Highways;
- Construction;
- Contract law;
- By-laws;
- Social services;
- Employment/labour/human resources law;
- Liability/insurance;
- Real estate;
- Technology;
- Privacy; and
- Corporate procedure

Litigation Role

Represent municipal corporations at various levels of court:

- Ontario Superior Court of Justice;
- Ontario Court of Appeals *all the way to Supreme Court of Canada if necessary*;
- Small Claims Court;
- Ontario Land Tribunal;
- Ontario Energy Board;
- Environmental Review Tribunal;
- Labour Arbitrations;
- Social Benefits Tribunal;
- Human Rights Tribunal; and
- any other specialized tribunal required

Drafting/Negotiator Role

have the requisite experience and licensing to draft and negotiate a wide variety of legally certified:

- Agreements;
- Contracts;
- Licenses;
- Leases;
- Government Procurement Documents (Tenders/Request for Proposals/Request for Quotations/Prequalification Documents/Request for Information Precedents) and Review/Analysis;
- By-laws;
- Policies;
- Memoranda; and
- Other necessary corporate documents

Typical Day / Tenets of the Office

- ◇ finding legal solutions to the most challenging issues that face modern-day municipal corporations, which the municipality does not otherwise do not have an answer for, to the benefit of our municipal team
- ◇ If you have a legal question, we have a legal answer
- ◇ committed to non-bureaucracy & efficiency
- ◇ here to help you get what you want, it is where possible, and warn you when it is not possible. Not here to dictate terms to you or be 'know it alls'
- ◇ we are regular people/approachable – please speak to each of us concerning our non-professional life backgrounds. We look forward to sharing our life stories and experiences!

Not Your Typical in-house Legal Department

- **County's first extensive hybrid work model test**
- **Non-union, unique type of environment**
- **Office has been remote since 2012, subject to being in Middlesex/London for meetings and court, as required**
- **Long before COVID**
- **Clients e-mail or call for advice first, then set up meetings**
- **Has allowed for tremendous efficiency and work product**
- **Multiple Council meetings a day possible**
- **Post COVID, even the Courts and Tribunals (Court of Appeal, Superior Court POA Court keeping a hybrid model (virtual for all appearances, motions and hearings which are not trials)**
- **Has increased access to quality legal advice and justice**
- **Provides for work/life balance**

Value Added Service

- ◇ the most underlooked but most valuable service that we offer
- ◇ having Legal Services Available at affordable cost often BEFORE the matter becomes an absolute legal emergency
- ◇ problems fixed at the root = LITIGATION AVOIDANCE
- ◇ example: Not fully understanding statutory responsibilities and not having appropriate responsibility, indemnity and security provisions is one of the primary causes of litigation and liability
- ◇ don't wait too long when concerns arise...come early

Team Member: David Samuels

- ◇ Barrister & Solicitor
- ◇ Formerly of Gartner & Associates, Toronto
 - ◇ Provincial Offences Defence law firm
- ◇ MCBSO:
 - ◇ Trained and developed in-house since 2019...
 - ◇ to become Prosecutions (POA) specialist (sub-specialty in zoning enforcement)
 - ◇ Trained & Practiced to conduct Superior Court and Tribunal Litigation
 - ◇ Fully Trained in solicitor's work of the Office
 - ◇ Has worked to become Senior Legal Counsel

Team Member: Mackenzie Consitt

- ◇ Formerly, Legal Assistant at Smith Valeriot Law Firm (Guelph) and Devereaux Murray (Seaforth)
- ◇ MCBSO Legal Assistant since 2020
 - ◇ has been trained in and thrived in role
 - ◇ supports the Office with a variety of administrative and clerical functions, including:
 - ◇ the drafting legal documents and furthering real estate transaction files in a fulsome manner to the point where they require review by LSO licenced counsel;
 - ◇ engages in important 'file moving' correspondence with opposing counsel's offices, clients and court registrars;
 - ◇ completes the filing of the Office's documents;
 - ◇ assists in the organization of the calendars of each legal counsel in the department to ensure the orderly completion of files;
 - ◇ compiles and produces invoices for our clients

1 Additional Team Member

- ◇ Office traditionally since 2015 had one additional legal counsel
- ◇ we do need a fourth person
- ◇ however, in 2023, I am considering the composition of that potential future position...
- ◇ and the means to keep it continuously functioning as one that is providing
- ◇ both barrister & solicitor services
- ◇ at an entry legal level

- ◇ This is not reducing in any manner, the MCBSO's capacity for local municipal work in 2023
- ◇ In fact we are expanding in that area
- ◇ 2023: increased priority to local municipal files and adjusted some County work

Some Awards/Notarizations

- ◇ We have some...but no need to dwell (listed on next slide)
- ◇ But our unique MCBSO model has become highly regarded in municipal circles
- ◇ It has been attempted to be replicated but cannot be duplicated
- ◇ We have achieved professional recognition through speaking engagements at Western Law School, IMLA, and MLDAO for the betterment of the profession and municipalities (which we hope makes all municipalities in Middlesex County proud)
- ◇ All municipalities in Middlesex County are looked upon fondly in these forums

List ☺

Wayne

- ◆ **Western University Law School – Teach the Intersection of Planning, Municipal, and Environmental Law in the Environmental Law Course**
- ◆ **Member International Municipal Lawyers Association**
- ◆ **2023 upcoming presenter on: the Preservation of Farmland, the prevention of over-severancing, a comparison between Middlesex County, Canadian Jurisdictions, and America Jurisdictions**
- ◆ **Regular speaker for IMLA, Seneca College, Institute of Public Administration of Canada, and the Municipal Law Departments of Ontario on: municipal openness and transparency, e-meetings, procurement law, responsibilities of the CAO/CEO, Wind Farms, Road Use Agreements, Pension Arbitrations, Employment Contracts, Minor Variances, Private Water & Wastewater Regulation, the Fiduciary Duty of Elected Officials; the Constitutionality on mask and vaccination policies; illegal connection to water works, enforcement of woodlands by-laws; application of the Charter to Administrative Tribunals; Individual Privacy Rights of an Employee in a corporation**
- ◆ **Serves on IMLA's Telecommunications, Procurement Model Document group, and Diversity & Inclusion Working Group**

David

- ◆ **Speaker on Woodlands Prosecutions for the Ontario Professional Forester's Association**
- ◆ **2023: Presenting By-law Enforcement Best Practices Presentation for all Local Municipalities**

Client Expectations

- ◇ law is type of profession that has changed with technology
- ◇ now, now, now, yesterday, yesterday, yesterday world
- ◇ no longer such thing as sending out snail mail opinion/demand letter or leaving a vm, leaving time for work on another file
- ◇ we work with that as pressures and adjustments that litigation and demands dictate
- ◇ we may not always be able to respond exactly when you want...most often we do...
- ◇ But we remain more precise, responsive and detail oriented than outside
- ◇ Quicker is not always better – success is better
- ◇ We do things correctly

How to Commence a File or Contact Wayne

1) legalhelp@middlesex.ca

- ◇ goes to Legal Assistant, Mackenzie Consitt
- ◇ links new file with our document management system for numbering and billing
- ◇ File will be assigned to a lawyer by Director of Legal Services, often through Legal Assistant, to one of our three lawyers for primary carriage
- ◇ Considerations include, expertise required, cost reduction, schedule availability, etc.
- ◇ Often, files are divided into parts and work together as a team

2) Call Wayne Meagher and request the opening of file

- ◇ [519-434-7321](tel:519-434-7321) ext. 2283
- ◇ *Allows our legal counsel to be able to focus on their assigned work without interruption or burn out*
- ◇ *Links new files with our document management systems*



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**MUNICIPAL LOW HANGING FRUIT
OPPORTUNITY:**

**MCBSO INSURANCE CLAIM PROCESS
EXPLAINED**



MCBSO Insurance Claim Work Explained

- ◇ **Claims/Litigation under Deductible: Handled in-house by MCBSO Directly**
 - ◇ i.e. MVA claims, road damage claims, road allowance work claims, etc.
- ◇ **Claims/Litigation above Deductible: = MCBSO Process**
 - ◇ MCBSO Process Applies
- ◇ **MCBSO Claims Above Deductible Process:**
 - ◇ A Legal Process
 - ◇ Commenced in 2017 at County and has led to major success
 - ◇ Insurer confirms

MCBSO Claims Above Deductible Process

- ◇ **Receives Served Documents for the County, from Clerk/Department Heads**
- ◇ **Determines if it is an initiating process (Statement of Claim) or just a notice of potential claim (Notice)**
- ◇ **Determines if there is jurisdiction for the claim to be made**
- ◇ **If no jurisdiction or bogus claim, ELIMINATES CLAIMS by dealing with claimant directly or making Motion in Court to knock them out**
 - ◇ **we call this “active municipal management of claims”**

MCBSO Insurance Process cont...

- ◇ Provide a legal opinion on the merits of the claim and on best strategy to defend
- ◇ Should insurer assign insurance Council, we work as co-counsel with the assigned insurance Council to ensure they know the intricacies of Municipal and not just MVA litigation, do not settle on points that the County does not want to settle on, and forward the defence of the Claim the way the County wants and not necessarily how the insurer wants
- ◇ Must municipalities use this process? No
- ◇ It is it necessary they do this? Yes. Otherwise, claims do not get forwarded with municipal expertise and are settled at time and at rates the Municipality does not want.
- ◇ MCBSO has worked with the insurer at the County level to allow the County to have that influence and on occasion, we have expended this to local municipalities where they have retained us on it

MCBSO Insurance Process Result

- ◇ **2017: Many more claims than we have now**
- ◇ **Impacts premium and deductible**
- ◇ **MCBSO's claims process has caused claims to be reduced every year since 2017**
- ◇ **March 2023: Much fewer open claims and reserves**
- ◇ **May 2023: Minuscule open claims and reserves**
- ◇ **Had claims remained same as in 2017, municipality would be paying approximately 40% higher premiums**

MCBSO Insurance Process Result

- ◇ = Gets the municipality a low deductible and premium credits
- ◇ Middlesex County = lowest deductible of ANY municipality in Ontario
- ◇ This at a time of increasingly litigious societal attitude
- ◇ Why at Legal? Staff and consultants without the necessary legal expertise do not have the expertise to shrink claims by years
- ◇ 91% of those who forward a claim have legal representation

If no MCBSO process...

- ◇ Without it, claims do not get forwarded with municipal expertise and are settled at time and at rates the municipality does not want. It is too easy just to just give to a broker or insurer and tack on a reserve, which only increases reserves, deductibles, and premiums
- ◇ MCBSO has worked with the insurer to allow the County to have that influence
- ◇ The MCBSO can work with your insurer or broker as well (flat fee discussions available)



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CONCLUSION



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What do we want to continue to do?

- ◆ continue to find legal solutions to the most challenging issues that face modern-day municipal corporations
- ◆ Continue the MCBSO's long established full service municipal, legal, business and employment specialties
- ◆ **Value Added Service:** continue to have Councils and staff remember to come early and pre-emergency for our value-added services: Legal Services are available at affordable cost BEFORE the matter becomes an absolute legal emergency and problems fixed at the root = LITIGATION AVOIDANCE
- ◆ Perform for you the MCBSO Insurance Process
- ◆ Continue the MCBSO's fundamental resistance to a culture of "no": here to help clients get what they want where possible, and warn when it is not possible
- ◆ Continue being regular people and approachable to clients

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