Winnipeg
Audit Department
Service de vérification

Audit of the Legal Services Department

February 2018

Leaders in building public trust in civic government

Table of Contents

AUDIT AT A GLANCE 2
AUDIT BACKGROUND 3
AUDIT OBJECTIVES 3
CONCLUSIONS 3
INDEPENDENCE 4
ACKNOWLEDGEMENT 5
LEGAL SERVICES DEPARTMENT BACKGROUND 6
OPERATIONAL MANAGEMENT EVALUATION 11
APPENDIX 1 – Audit Methodology 33
APPENDIX 2 – Audit Process 35
APPENDIX 3 – Risk Assessment Worksheet 36
APPENDIX 4 – KPMG Independent Audit Report 37
APPENDIX 5 – *Government Auditing Standards* Checklist 39

AUDIT AT A GLANCE

RECOMMENDATIONS

We recommended *that the City Solicitor:*

- *Review organizational structure options to enhance risk management, management development and succession planning processes.*
- *Allocate sufficient time to continue process documentation and systems development.*
- *Implement a risk management program supported with criteria to identify significant files that would require a quality control check and a risk-based file review.*
- *Job descriptions should be completed to guide the delegation and distribution of work.*
- *Conduct a workload analysis to determine the proper level and mix of resources required for service delivery.*
- *Submit a proposal to obtain the resources necessary to acquire and implement an appropriate practice management information system solution based on a comprehensive needs assessment.*
- *Regularly communicate a formal report on critical issues to the Chief Corporate Services Officer highlighting the key facts, key decisions and potential impacts.*

Project Background

On October 25, 2017 Council approved a motion directing the CAO to request the City Auditor to conduct a review of the City's Legal Services Department including an examination of the current systems and processes for pursuing legal action against contractors and develop recommendations to ensure that critical deadlines are not missed in the future.

The project was added to the City Auditor's 2018 Audit Plan which was approved by Audit Committee on December 6, 2017.

Findings

The overall tone of interviews conducted with legal staff was a close knit team led by the City Solicitor who take pride in the work they do to support City departments but struggle with workloads and tight deadlines. The City Solicitor has implemented a revision to the Department's organizational structure by introducing the concept of law practice groups. A further revision to the structure should have each practice group formally led by a supervisor / manager level resource. Benefits would include the ability to implement a more robust risk management system as well as allow for more management development and succession planning.

The concept of risk management should be viewed as a fundamental element of good governance but is still relatively new in legal firms. Legal Services should initiate a risk management program to identify the potential risks facing service delivery, the systems and processes in place to mitigate those risks and the resulting residual risk facing the Department. Performing a quality control check of key information supported by a risk-based review of other major decisions in the Department's significant files would be another key aspect in an effective risk management program. Formal periodic reporting to the Chief Corporate Services Officer on the issues within significant legal files will support corporate risk management efforts.

The City Solicitor has initiated the development and documentation of several new systems and processes including a City Administrative Standard to clarify roles and responsibilities for the review, approval and execution of agreements; an annual client satisfaction process; practice area templates and checklists; procedure manuals; and regular staff meetings. Finalizing formal job descriptions for staff will help clarify roles and responsibilities and support internal delegation and distribution of work.

Ensuring that the proper resources are performing the appropriate activities to achieve the best outcomes for the organization is the goal of a workload analysis. Management will need to implement systems to track and monitor staff workloads and associated overtime. Excessive workloads can lead to staff burnout and increased potential for human error.

The Legal Services Department should submit a proposal to secure resources for the implementation of a practice management software solution. System benefits have the potential to be significant and could include reduced direct costs for storage and services, staff efficiencies through reduced time to search for items or re-create documents from scratch, functionality to support task and time tracking and the ability to diarize dates with notification reminders.

AUDIT BACKGROUND

The intent of this audit is to evaluate the Legal Services Department's systems and processes that support risk management.

- On October 25, 2017 Council approved a motion directing the CAO to request the City Auditor to conduct a review of the City's Legal Services Department including an examination of the current systems and processes for pursuing legal action against contractors and develop recommendations to ensure that critical deadlines are not missed in the future.
- The project was added to the City Auditor's 2018 Audit Plan which was approved by Audit Committee on December 6, 2017.
- Our audit methodology is located in **Appendix 1**.
- **Appendix 2** provides a flowchart of the audit process.
- Our risk assessment criteria for each audit area is provided in **Appendix 3**.

AUDIT OBJECTIVES

One objective was identified for this audit

- The objective of this audit was to evaluate whether the Legal Services Department has the appropriate systems and processes in place to mitigate the risks of file management errors, including missing critical deadlines in legal processes.

CONCLUSIONS

Management systems need to be strengthened to properly identify, mitigate and monitor significant areas of concern.

- Over the last couple years management has initiated several projects to enhance departmental performance. This includes the creation of file checklists, document templates, procedure manuals, client satisfaction surveys and meetings and a staff orientation manual to name a few.
- Opportunities exist to continue to enhance departmental systems and processes which will enable the implementation of an effective risk management program. Revising the organization structure with a formal law practice group lead is an important first step that will ultimately lead to improved management development opportunities. Continuing to document internal procedures, checklists, templates and job descriptions, and formally reporting to the Chief Corporate Services Officer will improve risk management processes within the Department and contribute to improved efficiencies.

INDEPENDENCE

The Audit Department is classified as an independent external auditor under *Government Auditing Standards* due to statutory safeguards that require the City Auditor to report directly to Council, the City's governing body, through the Audit Committee.

For this audit report, we recognize that some members of the public may believe the Audit Department is not able to provide an independent evaluation of the Legal Services Department due to a perceived conflict of interests arising from familiarity between the two departments. The Audit Department recognizes that it is physically located in office space adjoining the Legal Services Department, is accessed by the same reception area, and that staff from both departments frequently communicate with each other. The Audit Department also utilizes the services of the Legal Services Department in the procurement of consultant work, and in the standard questions about legislation, compliance requirements, and investigations that might be occurring in each audit that we complete.

We believe these interactions could be sufficient to give the perception of a conflict of interest due to a familiarity risk. *Government Auditing Standards* state that a familiarity risk is "the threat that aspects of a relationship with management or personnel of an audited entity, such as a close or long relationship, or that of an immediate or close family member, will lead an auditor to take a position that is not objective;"

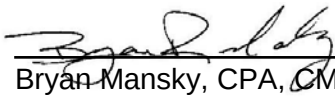
We recognize that such a threat could be perceived, but believe that an actual conflict does not exist in reality. For this audit, we have been requested to analyze systems and processes in the Legal Services Department, and to make recommendations for improvement, which is the same objective that we have for many of our audits. We believe that the tone of our report, and that the transparency of our observations and recommendations, will relay that we have performed this audit with the same diligence, care and objectivity that we do all of our work.

The Audit Department team members selected for the audit have all attested that they do not have any conflict of interest related to the audit's subject matter.

As an additional measure to address the subject of independence and the possible perception of a conflict of interest, the Audit Department has engaged KPMG to perform a quality control review of our *Audit of the Legal Services Department* report and supporting working papers. The scope of the quality control review was to conclude whether the audit was performed in accordance with *Government Auditing Standards* and that it has met the direction of the Council motion. KPMG's report is attached as **Appendix 4**. The checklist template that KPMG evaluated our work against is attached as **Appendix 5**.

ACKNOWLEDGEMENT

The Audit Department wants to extend its appreciation to the Legal Services Department, and to all of the stakeholders who participated in this audit.



Bryan Mansky, CPA, CMA, MBA, CIA
City Auditor

February 2018
Date

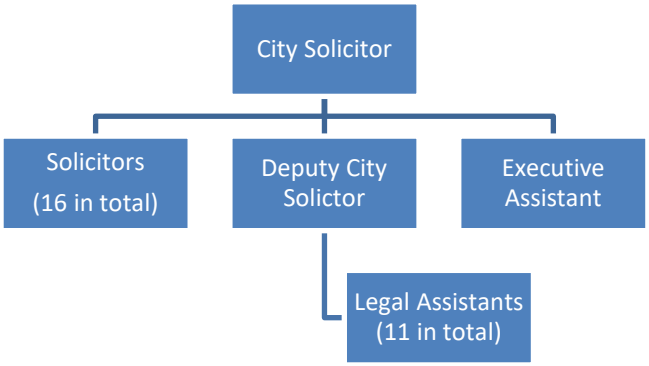
LEGAL SERVICES DEPARTMENT BACKGROUND

1.1 Legal Services Department Overview

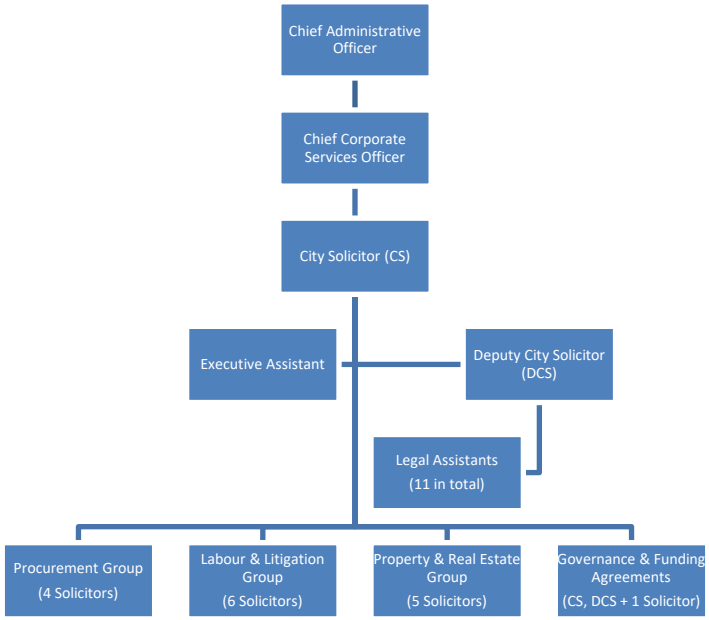
- The Legal Services Department ("the Department") is the in-house general counsel for the City of Winnipeg.
- The Legal Services Department provides a full range of legal services to the entire organization, including:
    - acting as general counsel to the organization;
    - providing legal advice 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
    - and providing training for staff

1.2 Organizational Structure of Legal Services

- The Legal Services Department is headed by the Director of Legal Services/City Solicitor who reports to the Chief Corporate Services Officer.
- The current organizational structure has all solicitors reporting directly to the City Solicitor.



- A recent revision to the organizational structure has created law practice groups. One key benefit to the alternate structure is the creation of practice areas that will produce specialty teams and foster greater collaboration among solicitors leading to enhanced customer service.



1.3 Legal Profession Concepts Relevant to Our Audit

- The discussion in our report has been framed in a way that we hope communicates the professional management practices of people who have been trained in the legal profession. We believe that some legal profession concepts should be explained to better illustrate our analyses and findings as they pertain to the management of a legal firm such as a municipal legal services department.

1.4 In-House Counsel vs. Private Practice

- It is important to discuss some of the differences between law firms that provide services to the general public, also known as “private practice”, and in-house counsel that provides service to a specific organization. These differences help to provide context and a better understanding of the circumstances that are unique to the Legal Services Department that may not be applicable to a private practice firm. Some of these differences include:
    - Private practice firms operate to generate a profit; in-house counsel operates to provide quality legal services and to mitigate the legal risks to the organization.
    - Private practice firms generally provide opportunities for higher salaries than in-house counsel, as private firm compensation is driven by billable hours.
    - Private practice firms have the ability to control the amount of work that they accept or turn away and to scale staff levels to meet that level of work, whereas in-house counsel handle all the legal needs of their organizations with little control over staffing levels. [1]

[1] McMullan, A. (2011, November). The Big Dilemma: Law Firm vs. In-House. *Canadian Lawyer Magazine*. Retrieved from http://www.canadianlawyermag.com/article/the-big-dilemma-law-firm-vs-in-house-1398/ on December 11, 2017.

1.5 The Concept of Malpractice

- The concept of malpractice is not limited to the legal profession, but for this context generally describes the failure of a legal professional to provide the level of service expected of that office through either negligence or intent. Malpractice lawsuits are not generally filed against in-house counsel lawyers; however, we believe that the same risks that can lead to a malpractice lawsuit are faced by private practitioners and in-house counsel alike (to a certain extent). Of the "Top Ten Malpractice Traps" described in the American Bar Association's *The Lawyer's Desk Guide to Legal Malpractice*, we believe the following risks are also risks of mistakes that are faced by in-house counsel:
    - Deadline recording and miscalculation errors
    - Workload, stress, substance abuse, and mental health related errors
    - Inadequate research errors
    - Lack of documentation errors
    - Poor client relations and communication errors
    - Subject matter screening and lack of skill set errors
    - Conflicts of interest[1]
- These risks are relevant to the Legal Services Department and were the main areas focused on for our audit analysis.

1.6 The Legal Profession and Management Training

- Our research revealed that management training is not a mandatory part of the legal profession. The American Bar Association quips that "Almost by definition, lawyers are generally hostile to being managed and to accepting management responsibility. The usual refrains from lawyers are, 'No one is going to tell me how to practice law' and 'I didn't go to law school in order to become a manager.'"[2]
- The Canadian Bar Association and provincial branches offer training courses covering a wide range of topics although the availability of continuing education courses targeting practice management appears more limited. A Certified In-House Counsel – Canada program is offered which includes courses on governance, financial management, communications, teambuilding and risk management (from a corporate perspective).

1.7 The Legal Profession and Risk Management

- The Legal Services Department is a risk management resource for the City of Winnipeg. It mitigates the legal risks for the City. We need to distinguish, however, that the risk management that the Legal Services Department offers, and enterprise risk management, are two completely separate things. Enterprise risk management is the process of assessing an organization's objectives, determining where the risks to meeting those objectives lie (including within internal operational processes), and developing and implementing solutions to mitigate the risks to an appropriate level. Enterprise risk management is a managerial discipline that is part of managerial training, which we have noted is not comprehensively addressed by the education stream of the legal profession.

---

[1] Hughey, A. (1992). *The Lawyer's Desk Guide to Legal Malpractice*. American Bar Association, Standing Committee on Lawyers' Professional Liability. (pps. 52-62).

[2] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 63).

- The American Bar Association actually points to the accounting profession for expertise in this area, noting that "risk management is so well developed in the accounting profession that it goes beyond the elements suggested in this [risk management guide], often involving regularly scheduled mandatory external reviews—conducted by competing firms."[1]

1.8 Practice Areas Typical to Municipal Legal Service Departments

- There are numerous different areas in which legal professionals can practice law. Due to the complex nature of law, practicing in any one of these areas can also be very complex, and can require highly specialized knowledge.
- Legal practice areas that are typical to municipal legal service departments, and that are practiced by the City of Winnipeg's Legal Services Department, include:
    - Corporate Law (government by-laws and policies)
    - Contract Law
    - Real Estate Law
    - Labour Law
    - Litigation (civil and commercial)
- The American Bar Association cites the increasing adoption of "practice groups", a firm structure that groups lawyers practicing in a specific legal area together in teams rather than an "every person for themselves" structure, as an effective risk management strategy that helps maintain a consistent and high quality of services being provided; allows for continual collaboration, learning, and training for all lawyers in the group; allows client needs to be considered by a group rather than an individual; and allows for mistakes made to be quickly identified and dealt with, rather than devolving into "calamities and crises".[2]

[1] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 61).
[2] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 81).

OPERATIONAL MANAGEMENT EVALUATION

2.1 Organizational Structure

Issue

- Does the organizational structure of the Legal Services Department support effective and efficient service delivery?

Conclusions

- The current organizational structure limits the effectiveness of the Department's risk management program. Formalizing practice group leads will allow for better oversight and monitoring of staff.

Analysis

- Ultimate authority for the Legal Services Department resides with the City Solicitor; however revising the structure and delegating some responsibilities could lead to an overall increase in efficiency and effectiveness of the Department.
- The current organizational structure is relatively flat; led by a City Solicitor with a direct reporting relationship to a Deputy City Solicitor and an additional sixteen solicitors. An Executive Assistant also reports to the City Solicitor. All legal assistants report to the Deputy City Solicitor.
- An alternate structure was recently implemented where all Solicitors still report to the City Solicitor but individuals would be assigned to a practice group. The Deputy City Solicitor also reports to the City Solicitor, would lead one of the practice groups and maintain responsibility over the legal assistants. At this time it has not yet been determined if the practice group lead position would be formalized and if so, at what grade level.
- Benefits of the proposed structure would include increased collaboration among Solicitors within a practice group, specialization which supports increased efficiency and consistency and improved decision making and/or advice to clients through the development of longer-term business relationships.
- Some limitations of the proposed structure are the lack of succession planning and development of management skills below the Deputy level and an inability to implement a more robust risk management system.
- The revised Department structure could create four tiers (City Solicitor, Deputy City Solicitor, practice area lead, solicitor) if practice leads are formalized and at a different grade than the Deputy position. The City's salary schedule could create difficulties in implementing this structure. The salary schedule for a solicitor and the Deputy City Solicitor may not allow sufficient wage gap to input a formal practice area lead level. This proposed structure would diminish accountability of individuals identified to act as practice area leads if the positions are not formalized thereby impacting the effectiveness of a proper risk management program.
- All other Canadian municipalities surveyed have implemented the concept of law practice groups within their departmental structure. The result is the City Solicitors have a number of law practice area leads reporting directly to them. The number of law practice areas typically varies between two and five.
- The organizational structure observed in other municipalities does appear to mirror a three-layer model. While there are differences in titles and the reporting relationships of the solicitors, the designed structures promote progression within the department in conjunction with increasing levels of responsibility and management oversight.

- Formalizing the practice group leads as supervisor / manager level within the Department will create a more effective structure. The Deputy could still lead one practice group and three other practice groups could be led by someone at the Deputy level or slotted between the Deputy and Solicitor level. Practice area leads could coordinate practice group meetings, participate in cross functional practice group meetings and conduct supervisory reviews of files.
- A City Solicitor acts as the general counsel for an organization, while they will typically have an area of law where they have specialized during their career they will not be the most experienced solicitor on staff for every practice area within a larger municipality. This is where practice areas leads are important within the organizational structure. They are the experts in that area and support the City Solicitor with valuable advice and critical review of junior staff within their area.
- Other options to revise organizational structure should be considered which could include placing the responsibility for overseeing the legal assistants to the Executive Assistant position. Then all practice area leads could be compensated at the same grade, recalling that the Deputy already acts a practice area lead.
- The legal assistants work with a variety of solicitors and as such there is no single individual in the Department that works with all. Arguably the City may not be receiving the best value out of the Deputy City Solicitor position, a very senior legal professional, when they are assigned responsibility for oversight of eleven legal assistants.
- As will be discussed in a subsequent section, the development of a more robust risk management system is integral to any effective department. At present, the only link is from Solicitor to City Solicitor which places an extreme level of responsibility on a single individual to ensure quality of all Departmental work products. A key role of a practice group lead should include oversight of the staff in their practice group and a risk-based file review.
- File reviews act as both a quality control checkpoint and provide opportunities for coaching staff on internal processes. Delegating file review to the practice group lead assigns the responsibility to the individual in the Department with potentially the most knowledge and experience on the type of file. Both the City Solicitor and Deputy City Solicitor have their areas of expertise but may not be the most knowledgeable in certain areas of the law, the practice group lead will possess that knowledge.
- Currently succession planning is limited with the only progression going from Solicitor to Deputy. In the event that the individuals at the City Solicitor and Deputy City Solicitor leave the employ of the City within even a few years of one another there may be limited options for successors and continued leadership of the Department.
- Management training is not a mandatory aspect of the formal training Solicitors acquire through their education. As such, development of management skills is critical to ensure continuity of the Department by growing a pool of internal candidates. On the job training, supplemented with professional development courses will aid in the development of management and support a structured path of progression.
- Participating in the annual performance appraisal process, mentoring and coaching junior staff brought into a practice group, assignment of new files within the work team and a review of select files are a few of the additional responsibilities that could be delegated to support the City Solicitor.
- Evaluating the compensation package of all levels of legal professionals is outside the scope of this audit. If the compensation package for the City Solicitor position changed, that would then have ripple effects on other legal professional levels and could lead to the identification of additional alternate organizational structures.

RECOMMENDATION 1			
The City Solicitor should review organizational structure options with the aim to implement a structure that supports risk management, management development and succession planning within the available compensation schedules.			
RISK AREA	Organizational Culture	**ASSESSMENT**	Moderate
BASIS OF ASSESSMENT	An effective organizational structure properly distributes and delegates management responsibility down into the organization. This then allows the assignment of responsibilities to individuals at the appropriate level to achieve results in the most efficient manner. A properly designed organizational structure also supports succession planning and promotes the continued training and development of staff.		
MANAGEMENT RESPONSE			
Agree. The City Solicitor is currently working with Human Resources to update job descriptions to reflect a departmental structure that includes team leads for each work group. Full implementation of the team lead concept will require a budget adjustment.			
IMPLEMENTATION DATE	Q2 2019		

2.2 Management Systems and Oversight

Issue

- Have appropriate management systems been implemented in the Legal Services Department that allow for proper oversight of staff and service delivery?

Conclusions

- We observed that the City Solicitor has improved the management systems for the Department over the last four years, enabling better oversight of the Department. Management will need to ensure that appropriate time can be directed toward further developing the management systems that the City Solicitor has been tasked with, and to managing the Department.

Analysis

- For frame of context, management oversight is the process of strategizing and allocating the resources of the organization to meet organizational objectives, while complying with applicable laws and regulations. Oversight includes the analysis of the organization's risk exposure, and the development of countermeasures to sufficiently mitigate those risks.[1] Management achieves oversight through the establishment of management systems that enable managers to monitor, evaluate, and readjust where and how resources are used. Supervision of staff is a core component of management oversight, but is not management's sole responsibility; management is also responsible for the development of the management systems that enable the organization to succeed.

Management Systems in the Legal Profession

- We discussed in the background section that respected professionals within the legal community have stated that management as a discipline is an area that can be improved in the profession as a whole. We also noted how the legal profession relies on firms to provide management training to their own managers; management training is not a part of a legal education.
- While management has been noted as an area for improvement in the community as a whole, we have also observed a movement in the legal community towards more disciplined management systems. In our research, we noted:
    - In the international legal community, the Government of New South Wales, Australia enacted the *Legal Profession Act 2004*, which requires that law firms "ensure that appropriate management systems are implemented and maintained". The Office of the Legal Services Commissioner also created self-assessment forms to aid firms in demonstrating their compliance with the act. The forms consider whether firms have appropriate systems to ensure: competent work practices, effective communication, timely provision of legal services, appropriate supporting documentation and records management for legal work, conflict of interest identification and resolution, and proper supervision of practice and staff.

[1] *Profile of Government of Canada (GC) Internal Services*. Treasury Board of Canada Secretariat. Accessed on January 9, 2018, at https://www.bac-lac.gc.ca/eng/services/government-information-resources/guidelines/generic-valuation-tools/Pages/management-oversight.aspx

- While not going to the extent of regulating compliance, The Law Society of England and Wales has developed the "Lexcel" accreditation standard for excellence in practice management and client care, which has been customized to fit private legal firms or in-house legal departments. The standard provides guidance on developing systems for: structure and strategy, financial management, information management, people management, risk management, client care, and file and case management. The Law Society of England and Wales published that over 11,000 firms had obtained the accreditation by 2012.[1]
- In Canada, The Law Society of Upper Canada has organized a listing of resources for effective practice management for lawyers on its website.[2] The listing covers practice management areas, including: general practice management, financial management, contingency planning, business structures, creation of office manuals, conflict of interest management, client communication, file management, key dates tracking, file review, equipment management, people management, supervision, and other legal and business concepts.
- The Canadian Corporate Counsel Association of The Canadian Bar Association offers a ten month business leadership certification program for in-house counsel composed of three three-day courses, one self-paced online course, and one final assessment covering a range of management topics.
- Locally, Fillmore Riley LLP was the first Canadian law firm to obtain ISO 9001 certification for its quality management systems.[3] The certification is an independent check that the firm has met the ISO 9000 standard for developing appropriate systems and processes that allow the firm to meet customers need, regulatory requirements and embed a continuous improvement process in the organization.
- We also discussed the availability of management training from the Law Society of Manitoba, which communicated to us that its management services are available to the City for consultation as a service of the Law Society, and without any additional cost to the City.

Management Systems in the Legal Services Department

- The City Solicitor communicated to us that she has received her management training more through experience than any management training courses. She has completed some of the City's leadership training courses, including obtaining a Masters Certificate in Municipal Leadership (16 day program). We note that the City's leadership training courses are primarily focused on staff supervision, and do not include financial or operational management training.
- With the experience and training that she has obtained, the City Solicitor has communicated to us the systems and processes she has developed for the department and the organization as a whole, which include:
  - Creation of City standards to better clarify the roles of the Legal Services Department and those of other City departments for agreements and policies.
  - Creation of annual client satisfaction and feedback processes.

[1] Gibson, J. (2012, March). Accreditation Can Help Firms Meet Fresh Challenges. *The Law Society Gazette*. The Law Society of England and Wales. Retrieved from https://www.lawgazette.co.uk/analysis/accreditation-can-help-firms-meet-fresh-challenges/64726.article on January 4, 2018.
[2] Accessed at https://www.lsuc.on.ca/printversion.aspx?id=2147498704 on October 12, 2017.
[3] Fillmore Riley LLP. Retrieved from http://www.fillmoreriley.com/our-approach on January 11, 2018.

- Creation of Council and committee monitoring processes to keep abreast of potential emerging legal issues.
- Implementation of continuing professional development tracking system to ensure compliance with Law Society requirements.
- Recent reorganization of department into law practice groups to create better communication, collaboration, and flow of common legal work.
- Implementation of monthly practice group meetings, and quarterly departmental meetings.
- Development of orientation manual for new employees.
- Development of templates and checklists for standard legal processes in the different practice areas of the department, and inventorying of templates that require updating or creation.
- Improvements to physical file security in the office.
- Initiation of process mapping and a workload assessment process.

♦ The sole responsibility for the management systems currently resides with the City Solicitor; however, if the management structure is revised to match those of other jurisdictions in Canada, the continued development of management systems for each of the practice groups will enhance performance management and risk mitigation in each area of the Department.

♦ While the City Solicitor has initiated a number of important management initiatives without having formal management training to do so, we believe it is important for the City Solicitor to obtain training in operational management. We believe the sources noted above in the legal profession are appropriate resources for the City Solicitor to draw on for considerations beyond the scope of this audit.

Supervision in the Legal Services Department

♦ We reviewed the most recent posting for the City Solicitor position for the City, and noted that it does not mention the requirement for the City Solicitor to carry her or his own personal case load while also managing the department. Our discussions with the Director let us know that she indeed is carrying her own caseload for the City, as well as managing the Department, and that this has been the case for past City Solicitors as well. In our jurisdictional survey, we learned that other City Solicitors across the country were also carrying their own caseloads, and that the typical split of time between working on their own cases and managing their departments varied from city to city from estimated lows of 15% supervising to 80% time spent supervising. We acknowledge that the specific amount of time devoted to management will vary, but note that not devoting enough time to management increases the operational risks for the Department.

- Further to this, we observed comments from some stakeholders in the City that senior employees require little supervision, and that checking over their work would be seen as "looking over their shoulders". We respectfully disagree with this perspective and note that the Law Society of Manitoba and are American Bar Association discuss this issue within their guidance, the latter stating "No matter how senior or venerated… everyone must be subject to the same basic rules and procedures."[1] While the degree of supervision will differ, all professional staff require some degree of oversight to mitigate critical risks to the organization and that supervision should not be interpreted as questioning one's professional competence. Senior employees typically assume the greatest responsibilities, have input into the larger corporate decisions but are still susceptible to human error.
- The City Solicitor has noted that she also has a number of other initiatives that she would like to develop, but does not currently have the time to devote to these items. We believe that further process documentation and systems development are important and appropriate time should be devoted to develop these items.
- The benefits of further developing the management systems include:
    - Creating better oversight of the department through performance monitoring and management
    - Improving the operational risk assessment and mitigation practices and reducing the risk of human error
    - Creating more consistency in decision-making and enabling further efficiency through standardization of common processes
- We were advised in interviews with other Canadian City Solicitors that management duties have been embedded in their job descriptions. We have discussed and recommended on job descriptions for the department in Section 2.4 – Internal Guidance of this report.

RECOMMENDATION 2			
We recommend that the City Solicitor monitor the professional caseload assigned to Departmental management staff to ensure appropriate time is devoted to further developing internal management systems and oversight of staff.			
RISK AREA	Organizational Culture	**ASSESSMENT**	High
BASIS OF ASSESSMENT	An imbalance in devoting sufficient time to developing management systems and maintaining oversight is not an effective risk management strategy.		
MANAGEMENT RESPONSE			
Agree. Implementation of this recommendation will be ongoing; however, the City Solicitor and Deputy City Solicitor will immediately begin developing and implementing outstanding internal management systems.			
IMPLEMENTATION DATE	Q2 2018		

[1] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 158).

2.3 Risk Management

Issue

- Does the Legal Services Department have an effective risk management program?

Conclusions

- Recently implemented initiatives such as the creation of practice groups, procedure manuals, checklists and templates serve as the foundation of a risk management program. Opportunities still exist to further develop a more robust risk management program.

Analysis

- The American Bar Association's Law Practice Division identifies two options for defining risk:
  - "any danger that, if not controlled, may lead to consequences unintended by and harmful to a law firm or practitioner. This includes professional discipline, malpractice or other claims for disgorgement of fees or money damages, and other allegations of wrongful conduct in the course of law practice."
  - "anything that interferes with the ability of the firm and its lawyers to provide legal services and generate profit from doing so."[1]
- Neither definition is perfectly aligned with the services provided by in-house Counsel, but the intent of the definitions is to communicate that risk is anything that could interfere with the delivery of service and achievement of objectives.

Risk Management Program

- Risk management should be viewed as a fundamental element of good governance. The concept is very well developed and engrained in the accounting profession but is still relatively new in legal firms. A risk management program works best when championed from senior management and responsibility is delegated throughout the organization.
- The ABA publication goes on to define risk management as "the establishment of institutional policies, procedures or systems designed to identify and minimize risk within the firm and its practice."
- Identifying the potential types of risks, often referred to as the risk universe, provides a baseline of information necessary for management to develop their risk management program. The primary areas of risk relevant to the Legal Services Department include: practice management (client relations, professional responsibilities), monitoring and compliance with legislation, operations (internal procedures, human resources, physical space), information technology (continuity, security, recovery) and strategic (risk, reputation).

[1] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 53).

- The previously identified New South Wales Legal Profession Act 2004 required those firms "to ensure that appropriate management systems are implemented and maintained." While a risk management program is not explicitly defined as a management system, the supporting language and self-assessment checklist is reflective of evaluating the legal firms systems from a risk management perspective. The checklist starts by defining typical objectives of a legal firm through to systems (policies, procedures, processes, checklists, etc.) that should be in place. The checklist's listing of "appropriate management systems" does include several of the areas of risk identified by the American Bar Association and previously defined in this section: work practices, communications, operations, records (would include IT) and supervision.
- The Department has implemented or is in the development phase of documenting custom templates, checklists and supporting procedures for each practice group. These tools serve to increase consistency and standardization, reduce errors, improve efficiency and are integral to implementing a risk management program. We also note that developing a risk management program is a process. It is normally developed in stages, cannot happen all at once, and cannot be accomplished in a vacuum.[1]
- As previously noted, the creation of practice groups is an effective strategy to build expertise in key areas and supports staff development. Practice groups are a key element in risk management as they are the first layer to identify and promptly deal with evolving risks or identified file mistakes.
- The risk management program is layered over the entire Department's service delivery processes and encompasses all management and information systems. The legal professionals within each practice group play a critical role in identifying and defining risks along with potential strategies to mitigate. The City Solicitor, Deputy City Solicitor and practice group leads would then develop a more complete view of the Department's full portfolio of risks.
- A risk management program does not reduce the accountability of the legal professionals; rather it supports them in the delivery of service where it can provide better information for planning purposes, improved information for decision makers and improved personal well-being through confidence in the process.
- An effective risk management program will recognize the current systems, processes and tools that support service delivery and go on to identify where and to what level risk still exists in the operation. Human error through misinterpretation of law, miscalculation of figures (dates, estimated loss, etc.) or omission of critical details all still exist despite the presence of supporting systems and tools.

Quality Control Checklists and File Reviews

- The Legal Services Department is involved in hundreds of files each year, some minor or routine and others quite significant, some files are active and other can remain dormant for significant periods of time. Performing a quality control check of key information supported by a risk-based review of other major decisions in the Department's significant files would be another key step in an effective risk management program. It is important to emphasize that not all information in every file requires review; rather a risk-based review to identify the most significant files will serve as a starting point to mitigate organizational risk. Once a file is identified for review, a further risk-based approach should be employed to review the critical dates, decisions and other details of the file.

[1] Davis, A.E., and Lachter, K.M. (2015). *Risk Management: Survival Tools for Law Firms*. 3rd Edition. American Bar Association, Law Practice Division. (p. 196).

- We observed that regular file reviews was a key concept of the New South Wales compliance self-assessments, the Lexcel practice management standard of England and Wales, and was reported to be completed by other Canadian City Solicitors we interviewed.
- The initial point of file review should reside with the practice group leads as experts in that field. Escalation of the file review and reporting to corporate management would occur at the discretion of the City Solicitor.
- This quality control work should also check for common human error risks such as miscalculation of dates, conflict of interest consideration, file acceptance issues and that appropriate client communications have been undertaken.
- Corporate management should be involved in the discussion of developing criteria to identify which files are significant in order to implement a resource sensitive risk management process. The criteria may differ between practice groups but should focus attention to the files with significant potential impacts. Examples could include financial implications from litigation or be precedent setting from a labour standpoint.

RECOMMENDATION 3			
Legal Services management should further develop the risk management program to identify the potential risks facing service delivery, the systems and processes in place to mitigate those risks and the resulting residual risk facing the Department.			
RISK AREA	Management Processes	**ASSESSMENT**	High
BASIS OF ASSESSMENT	An effective risk management program provides information to enable management to either exploit opportunities or to avoid negative consequences.		
MANAGEMENT RESPONSE			
Agree. While risk assessment is a factor considered in each file assigned to Legal Services, a formal risk management program will be developed and implemented.			
IMPLEMENTATION DATE	Q4 2018		

RECOMMENDATION 4			
Legal Services management should implement a file review process that includes conducting a quality control check of key information supported by a risk-based review of other major decisions in the Department's significant files.			
RISK AREA	Management Processes	**ASSESSMENT**	High
BASIS OF ASSESSMENT	An integral component of an effective risk management program is timely file reviews. File review can provide an early warning of a wide variety of potential errors where time may still be available to rectify the issue.		

MANAGEMENT RESPONSE	
Agree. Legal Services will, in consult with the CAO's Office, develop and implement a file review process that takes into account significant risks to the organization (political, financial, etc.) as well as resources required to perform such file reviews in addition to current workloads.	
IMPLEMENTATION DATE	Q4 2018

RECOMMENDATION 5			
Legal Services management, in conjunction with corporate management, should develop a set of criteria to identify those files which have the potential for significant impact to the organization.			
RISK AREA	Management Processes	**ASSESSMENT**	High
BASIS OF ASSESSMENT	Defining appropriate criteria to identify which files are significant or critical to the organization will enable Legal Services management to balance the assignment of resources to risk management versus ongoing case work.		
MANAGEMENT RESPONSE			
Agree. Legal Services will, in consult with the CAO's office, develop a set of criteria that identify files that pose significant risks to the organization (political, financial, etc.) and should be subject to the file review set forth in recommendation 4.			
IMPLEMENTATION DATE	Q2 2018		

2.4 Internal Guidance

Issue

- Has documented internal departmental guidance been sufficiently developed to clearly communicate roles and responsibilities to staff?

Conclusions

- The City Solicitor has initiated the creation of internal guidance documentation to guide staff in their work. Some of the guidance has been completed, and some has been noted to require updating or development. Departmental management should set enough time aside to complete these guidance documents, and to ensure that job descriptions exist for all positions in the department.

Analysis

- Staff must be clear on their roles and responsibilities in the organization to be able to successfully perform their jobs. Clarity is typically provided through job descriptions and policy and procedure documents.
- We observed that the legal professional staff believed that they had clarity on their responsibilities for the legal work that they completed. We were informed by the staff that they knew they were responsible and accountable for the legal work that they were assigned in all respects to practicing the law. This understanding is consistent with the Law Society of Manitoba's *Code of Professional Conduct*, which states that lawyers have "complete professional responsibility for all business entrusted to [them]" and "must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer".
- We also observed that staff showed appreciation for the guidance that was being developed to help them navigate through City processes (such as procurement processes, or political and administrative processes) that were outside of the technical aspects of practicing law. Staff believed that the guidance that had been developed to date in these areas helped them when they approached City administrative processes that they had not encountered before.
- In relation to the legal and administrative processes, we observed that a number of documents had been created, including process descriptions, checklists and templates for processes that were described to us to be common services provided in the different practice areas for the department. The guidance directed both solicitors and legal assistants in the work that they should complete for these services. The templates and checklists were at varied levels of completion; however, the documentation provided to us also noted which of these guidance documents were due to be updated, and where guidance was yet to be developed. Testing the quality or completeness of what should be developed for the practice of law in these areas was outside of the scope of this audit. We also observed that some practice areas, such as litigation, do not lend themselves to the extensive development of templates due to the nature of the work.
- In our discussion with senior solicitor staff, we noted that some questions remain in what work was appropriate to delegate to legal assistant staff. This is where job descriptions would be helpful to clarify these roles and responsibilities; however, the City Solicitor was advised by human resources that the approval status was unknown. Job descriptions are an important document to guide the delegation and distribution of work in the Department to ensure that tasks are completed by the appropriate resource.

RECOMMENDATION 6			
We recommend that the City Solicitor continue to work with the Human Resources Division and the Labour Relations Division of the City to create approved job descriptions for all positions in the Department.			
RISK AREA	Human Resource	**ASSESSMENT**	Moderate
BASIS OF ASSESSMENT	Internal guidance on roles and responsibilities, including policies, procedures, and job descriptions is important to clarify the division of labour, and to enable staff to succeed in their work. A lack of clarity can lead to unequal work distribution, duplication of work, inconsistency in work product, or incomplete work.		
MANAGEMENT RESPONSE			
Agree. The City Solicitor is currently working with Human Resources to update job descriptions.			
IMPLEMENTATION DATE	Q2 2018		

2.5 Workload Analysis

Issue

- Is the Legal Services Department properly staffed?

Conclusions

- The Department does not currently track the information necessary to determine if staffing levels are appropriate. We did obtain other information that does suggest the Legal Service Department may be understaffed and supports the need for collecting quality information to perform a workload analysis.

Analysis

- All organizations, including municipal governments, rely extensively on staff to deliver services and it does represent one of the largest expenditure line items.
- Ensuring that the proper resources are performing the appropriate activities to achieve the best outcomes for the organization is the goal of a workload analysis. This requires tracking which resources (solicitors and legal assistants) are performing which activities.
- The analysis will provide information to determine if the proper mix and amount of resources is available within the Department. A workload analysis may also provide insight into identifying productivity leaders and others who may be lagging. Due to the varied nature of the work performed within the Legal Services Department, caution should be exercised when interpreting productivity measures.
- A comparison of the staff complement to other Canadian jurisdictions is illustrated below.

	Winnipeg	City 1[2]	City 2	City 3	City 4
Population[1]	705,244	< 250,000	500-750,000	750-1,000,000	1 – 1,500,000
Solicitors	18	12	29	52	69
Legal Assistants	12	10	11	11	15
Other (clerks, students, paralegals)	0	0	8.5	20	19
Total	30	22	48.5	83	103

Note 1 – Census Profile - 2016 Canada Census (http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E)
Note 2 – Anonymity of the information collected was assured to other Canadian City Solicitors who participated in our jurisdictional interviews.

- Municipal Benchmarking Network Canada compiles and publishes the in-house legal operating cost per $1,000 municipal operating and capital expenditures. The median figure in 2016 was $2.34 with Winnipeg reporting a figure of $1.92. Winnipeg consistently ranked near the bottom (least cost incurred) of the municipalities reporting over the recent 2014-16 time period.
- It is important to note that metrics such as those included above are not definitive and should not be used as the sole support when making resource decisions. In this case they are an indicator to suggest additional information should be gathered and analyzed. Other issues, such as total requests for services and experience of staff would also have to be included in a resource evaluation.

- The current City Solicitor implemented a task tracker tool to compile information on the quantity of major tasks completed by the solicitors. The system is based in Microsoft Word; we were informed that a previous Excel based version was deemed unsuccessful. Each practice group is assigned a template for continued updating, ideally on a weekly basis. Solicitors are also assigned an individual "Administrative and Opinions" worksheet to capture additional workload statistics.
- Through this tool the Department does track a number of volume output metrics that cover the different law practice areas. Tracking outputs in isolation does not provide support to evaluate if the Department has the appropriate level and type of resources available.
- Currently, the Legal Services Department does not track staff hours dedicated to specific files or tasks and also does not track the amount of overtime incurred by staff. The exception is that Legal Services does track the number of hours expended on large projects such as the Southwest Transitway capital project. Inclusion of a measurement of time within the task tracker process is not being contemplated at present, due in part to the limitation of current information systems.
- Interviews conducted with a number of the solicitors employed at the City as well as our own anecdotal observations do suggest that the legal professionals work overtime hours. Some staff referenced working considerable overtime hours at various times during the year while others suggested a minimum level of overtime was regularly required to keep pace with the workload throughout the year.
- Overtime is an accepted component of service delivery in most parts of the City. In some cases it makes sense to incur some overtime as opposed to hire additional permanent staff. In other cases, overtime is a necessity related to the delivery of that service.
- For individuals working in a professional field (lawyers, engineers, accountants), a certain level of overtime, without compensation, is expected. But management must be cognizant of the amount of overtime staff may be incurring to deliver services to client departments. The nature of at least some of the legal work completed by the Department requires clear thought and time for consideration of alternatives or implications of their decisions and recommendations.
- A publication from the American Bar Association[1] explicitly identifies workloads as a contributing factor to the second most common malpractice issue. Excessive overtime resulting from high workloads can lead to a variety of *potential* impacts including: mismanagement of information, inadequate research/thought put into legal analysis, loss of critical information such as key dates, work dissatisfaction, low morale, burnout and turnover.
- The responsibility lies with management to implement systems to track and monitor staff workloads and any resulting overtime. Compiling the information to objectively observe workloads over longer time periods and the required hours of work provides management with quality decision making information. Categorizing staff time between direct (assigned to specific legal files) and indirect (vacation, training, sick, general office duties, HR and finance) will illustrate where the total available hours are utilized. Specific to direct time, management should confirm that the current listing of service deliverables being tracked adequately covers the majority of effort expended by Department staff.

[1] Hughey, A. (1992). *The Lawyer's Desk Guide to Legal Malpractice*. American Bar Association, Standing Committee on Lawyers' Professional Liability. (pps. 52-62).

- A time tracking process should include the legal assistants as they are a valuable resource within the service delivery team. With their inclusion in the time tracking process, management should then contemplate defining appropriate sub-categories for assigning time to provide insight into whether the appropriate level of resource is completing the identified task.
- Management will need to strike an appropriate balance between collecting a reasonable level of information with the least amount of effort. This is critical to garner staff buy-in and to lead to meaningful performance information.
- The legal professionals who work at the City utilize Microsoft Word for legal work and to complete the task tracker templates. Given the initial task tracker pilot was Excel based and evaluated as unsuccessful, the needs assessment for a practice management information system should include the requirement for task and time tracker functionality.

RECOMMENDATION 7			
The Legal Services Department should develop a system to compile the information necessary to perform a workload analysis. This should include both volume output metrics that cover all areas of service delivery as well as staff hours incurred, including overtime. Management should also ensure the level of detail for direct hours includes all hours expended on specific files and sub-categorized into relevant types of duties.			
RISK AREA	Human Resources	**ASSESSMENT**	High
BASIS OF ASSESSMENT	A proper staffing mix and level is necessary to deliver both effective and efficient legal services to clients.		
MANAGEMENT RESPONSE			
Agree. The Legal Services Department will implement enhancements to the existing workload assessment system throughout 2018 to incorporate timekeeping principles. Full implementation of this recommendation will require a budget adjustment to purchase legal file management and timekeeping software.			
IMPLEMENTATION DATE	Q4 2019		

2.6 Information Systems

Issue

- Does the Legal Services Department have adequate information systems to support service delivery?

Conclusions

- Current information systems do not efficiently or effectively support staff in service delivery and contribute to increased costs for storage and delays in responding to client requests. Modern practice management information systems will increase operational efficiency and support risk management systems with their built-in functionality.

Analysis

- The Legal Services Department has a File Opening System (FOS) database. The system is used to create case files, assign a file name, add a description, and cross reference to other files. The FOS system is primarily a file tracking system, logging basic tombstone information but does not store relevant files. Overall the system does not have very robust capabilities. The Department also uses the Microsoft Office Suite (Word, Excel, Outlook) and SharePoint as the primary software platforms. While the systems meet the basic user needs they are not sufficient to meet the requirements of a modern efficient and effective legal office.
- The lack of a modern practice management system results in the Department incurring material costs annually for storage, retrieval and delivery of files. As at December 31, 2016, Legal Services had 3,888 standard boxes in storage. The services cost is comprised of pulling or re-filing boxes or file folders and pickup and delivery between storage facility and office. The costs are summarized below:

Legal Department Storage and Service Costs			
	2016	2015	2014
Storage	21,331.64	19,108.47	17,043.98
Services	3,656.10	1,912.95	2,730.50
Total	24,987.74	21,021.42	19,774.48

- Aside from the pure financial impact, other significant risks exist due to the lack of proper information systems to support the Legal Services Department. Some of the more noteworthy risks include[1]:
  - Loss of data in the event of a disaster - paper files can get lost or destroyed and are irreplaceable in many instances.
  - Communication gap - when source documents are not readily available it can hamper timely communication.
  - Loss of reputation - if a decision needs to be made in a hurry without access to complete information, this can lead to a poor or wrong decisions being made.

[1] Mancini, John F. (January 13, 2011). 8 Risks Organizations Can Avoid by Using a Document Management Solution. Association for Intelligent Information Management. Retreived from http://info.aiim.org/digital-landfill/newaiimo/2011/01/13/8-risks-organizations-can-avoid-by-using-a-document-management-solutionon December 20, 2017.

- Time and cost overruns – it can be difficult and time consuming to fetch information from a physical document library - this can lead to delays and incurring additional costs.
- Failing to comply with legal requirements – the Legal Services Department must comply with professional standards regarding the security of solicitor – client privileged information. Recently, locking mechanisms have been installed on office files cabinets and the lack of file security at the storage facility does pose concerns over compliance with standards.
- Increased potential for human error – a lack of built-in functionality such as shared file specific calendaring of dates, deadline reminders and to-do lists can lead to costly missteps.

- The Legal Services Department should submit a proposal to secure resources for the implementation of a case management and document management system that meets their needs.
- A case management system can generally be described as a shared database, accessible as required, of all client information. The information stored can typically be highly customized and include a variety of fields of information about the contacts and cases. Aside from basic tombstone information (names, addresses, contact information, etc.) many systems will allow users to view and instantly retrieve any document related to a specific case and be alerted by reminders to critical dates.
- The full benefits of a case management system are better realized with the implementation of a supporting document management system. These systems are used to track, manage, store and retrieve documents. Administrators can control access to documents and track versions created and modified by different users.
- Benefits of the implementation of these systems within the Legal Services Department have the potential to be significant and could include:
  - Many systems have a calendar function built-in to diarize dates with notification reminders to many or all. We note that missing deadlines through various errors is a common issue in legal practice, and were reported to be the cause of over 23% (9,706 cases) of all malpractice suits in the US from 2000-2007.[1]
  - Future impact on the costs identified above for storage and services as the necessity for offsite storage will diminish over time.
  - Savings on internal staff time savings as the process to search for items or re-create documents from scratch, etc. will be more efficient. It was noted in our staff interviews that some felt the time savings from not having to request files from storage and search boxes or search online for similar past documents could be as high as 15%. The current search functionality is limited due to lack of metadata and indexing of file contents.
  - Increased collaboration, within practice and across practice groups, on specific matters and cases becomes more efficient and effective.
  - Improved security over electronic records including limiting access privileges and reducing the potential for deletion and the associated impact on customer service while waiting for backup retrieval.

[1] Pinnington, D. (2010, July/August). The Most Common Legal Malpractice Claims by Type of Alleged Error. *Law Practice Magazine*. American Bar Association. Retreived from https://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_webonly_webonly07101.html on October 20, 2017.

- Other jurisdictions we contacted have already implemented, or are issuing RFPs to acquire dedicated law office management software platforms to support service delivery. Specific systems identified by other jurisdictions include LawBase, ProLaw and Practicemaster. The other municipalities selected a system that best met their needs and fit their processes.
- Actual costs for the acquisition and implementation of an appropriate software solution will ultimately depend upon the specific applications selected. Our preliminary research indicated one-time costs for acquisition, server licensing, implementation and training would be approximately $50-75,000. Ongoing annual maintenance fees could be under $10,000.
- Implementation of these types of systems is an extremely complex undertaking and requires a mapping of the current and future state processes as well as a comprehensive needs assessment to identify key functionality sought from the system. This upfront part of the process will require significant involvement from all legal staff in order to achieve maximum benefits post implementation.
- Corporate support from information technology and change management is required to increase the likelihood of a successful implementation that meets the user's needs.

RECOMMENDATION 8			
The City Solicitor should work with corporate partners to submit a proposal to obtain the resources necessary to acquire and implement an appropriate practice management information system solution based on a comprehensive needs assessment.			
RISK AREA	Information Resources	**ASSESSMENT**	High
BASIS OF ASSESSMENT	Information systems are critical to the efficient and effective functioning of the Department and are essential to support staff in the delivery of service to clients.		
MANAGEMENT RESPONSE			
Agree. The City Solicitor is currently working with Corporate IT to develop a business case for the 2019 budget process. Implementation of this recommendation will require a budget adjustment.			
IMPLEMENTATION DATE	Q2 2019		

2.7 Reporting to C-Suite

Issue

- Are the Chief Corporate Services Officer and Chief Administrative Officer receiving timely information on critical legal issues?

Conclusions

- The City Solicitor meets monthly with the CCSO to provide updates on a variety of issues and solicit guidance on the priority of service requests. The addition of a formal update report will ensure that critical issues are regularly communicated.

Analysis

- City Departments regularly update senior management through the provision of various reports to Standing Policy Committees. These reports are vetted through the senior management suite and are a mechanism to provide timely and relevant information. Legal Services, as a primarily internal service provider does not regularly author reports. They may be consulted on reports and will have provided comment on the legal risks arising from the issues contained within the report.
- Creating a standalone report for senior management can provide essential information on the status of critical legal files. This level of reporting will provide an early warning of potential issues which can provide valuable information into the decision making process.
- The critical files under the purview of the City Solicitor can have far reaching impacts beyond simple financial implications. A full assessment of the potential ramifications of a legal matter can extend well beyond the Legal Service Department's area of expertise and should include top management. While the City Solicitor does meet with the CCSO regularly, supporting those updates with a formal report will serve to ensure all critical details have a lifespan beyond the discussion at the meeting.
- The City Solicitor prepares an annual report for the external auditor identifying significant claims against the City. This report would serve as a useful starting point but should be expanded to include all critical or significant legal files. The criteria to define the threshold of when a legal file is critical or significant will need to be defined to provide guidance for the different law practice areas.
- The level of detail within the report should disclose all key facts and decision points thus far along and upcoming decisions with a preliminary assessment of the potential impact to the organization.
- Reporting frequency can be established through discussions with the CCSO, but a potential starting point could be on a quarterly basis and adjusted as needed.
- Relevant and timely reporting supports an effective governance model.

RECOMMENDATION 9			
The City Solicitor should regularly communicate a critical issues report to the CCSO highlighting the key facts, key decisions thus far and upcoming and potential impacts resulting from significant legal files.			
RISK AREA	Management Processes	**ASSESSMENT**	Moderate
BASIS OF ASSESSMENT	Communicating timely and relevant information supports effective decision making.		

MANAGEMENT RESPONSE	
Agree. The City Solicitor will prepare a template report format for review and approval by the CAO's Office and work with the CAO's office to determine appropriate timelines and recipients of reports.	
IMPLEMENTATION DATE	Q2 2018

APPENDIX 1 – Audit Methodology

MANDATE OF THE CITY AUDITOR

- The City Auditor is a statutory officer appointed by City Council under *The City of Winnipeg Charter*. The City Auditor is independent of the Public Service and reports directly to Executive Policy Committee, which serves as the City's Audit Committee.
- The City Auditor conducts examinations of the operations of the City and its affiliated bodies to assist Council in its governance role of ensuring the Public Service's accountability for the quality of stewardship over public funds and for the achievement of value for money in City operations.
- Once an audit report has been communicated to Council, it becomes a public document.

PROJECT RISK ANALYSIS

- Our audits are conducted using a risk-based methodology.
- We considered the following potential risks when assessing whether the Legal Services Department has the appropriate systems and processes in place to mitigate the risks of file management errors?
    - Is there an effective risk management system in place to identify, mitigate and monitor critical risks?
    - Are the information systems sufficient to support both management and solicitors in their roles?
    - Is the level of staffing appropriate for the expectations placed on the Legal Services Department?
    - Do proper policies and procedures exist to guide solicitors in the execution of their duties?
    - Does management possess sufficient general management training to provide proper oversight of the Department?
    - Does the Department have appropriate management systems and processes in place to support service delivery?
    - Does the Departmental workload allow time for management to mentor, train and oversee staff?
- Individual audit area risk assessments are provided for each issue discussed. The assessments discuss and detail the residual risk for issues after considering the City's mitigating risk controls.

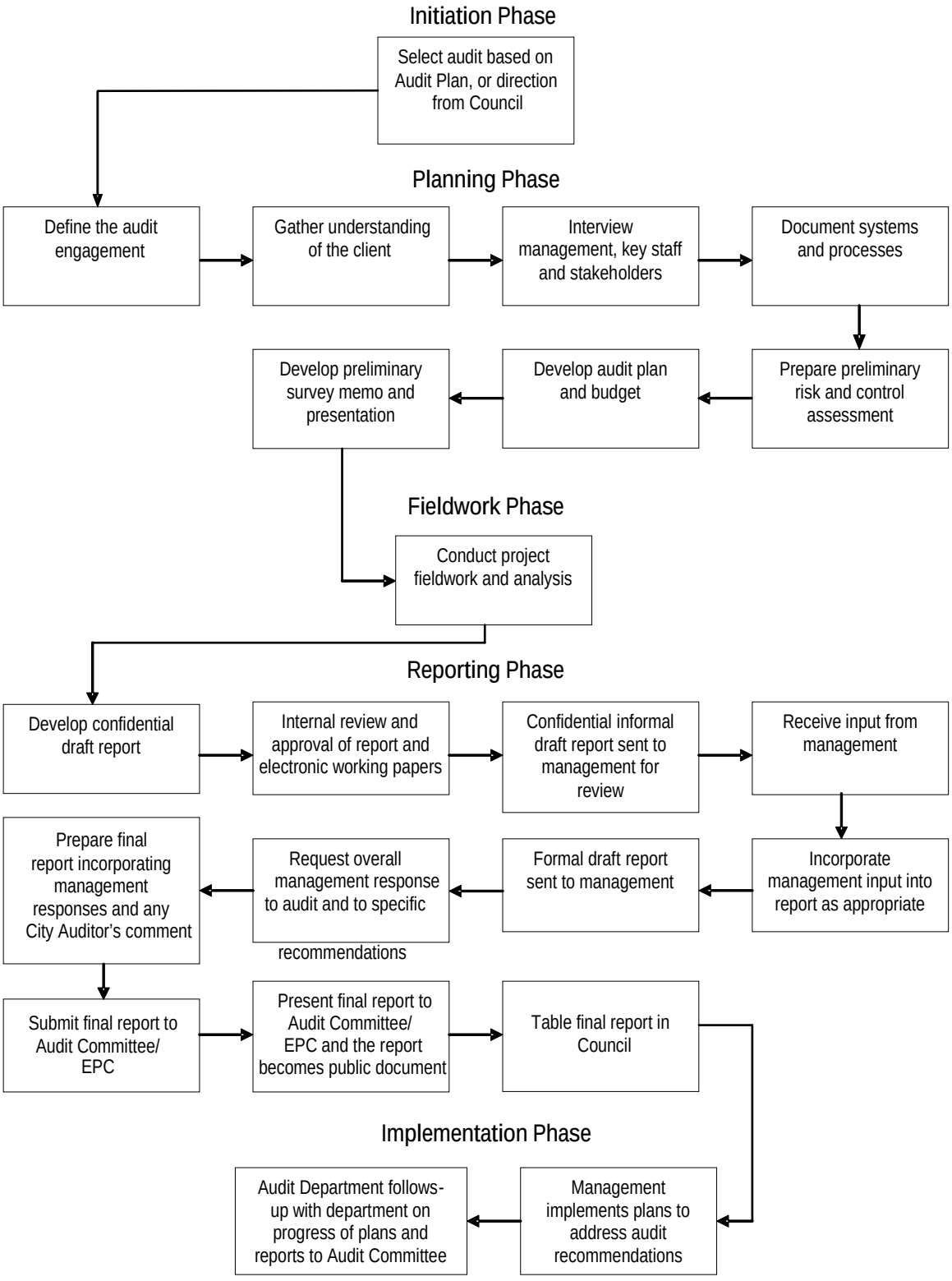
SCOPE

- The audit will examine the file management and risk management systems of the Legal Services Department in relation to mitigating the risks through legal processes.

APPROACH AND CRITERIA

- We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our observations and conclusions, based on our audit objectives. We believe the evidence we have obtained provides a reasonable basis for our observations and conclusions.
- We researched legal professional literature to gain an understanding of the workings of legal firms, in-house counsel, standards to be followed, recommended management systems, and how risk management is applied to the legal profession.
- We undertook a limited scope jurisdictional comparison with other municipal in-house legal Counsels.
- The audit will also consist of interviews with Legal staff to determine their understanding of the operations of the department, as well as a document review of the systems in place. Testing of information relied on to form our conclusions will also occur.

APPENDIX 2 – Audit Process



APPENDIX 3 – Risk Assessment Worksheet

Potential Impacts / Likelihood	Insignificant - None or minor change in services, project or processes - Very limited exposure of sensitive information - Very minor, non-permanent environmental damage - Financial impact < $100K	Minor - Minor change in achievement of service objectives - Limited exposure of sensitive information - Minor, non-permanent environmental damage - Financial impact $100K – $500K	Moderate - Moderate change in delivery of essential services - Exposure of limited amount of confidential information - Moderate environmental damage - Financial impact $500K – $1M	Major - Significant change in delivery of essential services - Exposure of significant amount of confidential information - Significant change in quality of life indicators - Major environmental damage - Financial impact $1M – $10M	Extreme - Unable to perform essential services for extended period Exposure of critical confidential information - Very significant change in quality of life indicators - Significant damage to environment - Financial impact >$10M
Almost certain (Excepted to occur unless circumstances change)	M	M	H	C	C
Likely (Probably occur in most circumstances)	M	M	H	C	C
Possible (Might occur under different circumstances)	L	M	M	H	H
Unlikely (Could occur if circumstances change)	L	L	M	H	H
Rare (May occur in exceptional circumstances)	L	L	M	M	M

Legend

C Critical risk:	Requires urgent action, monitor and review at least weekly by Senior Management and COO, inform CAO and Committee of Council
H High risk:	High impact, monitor and review at least quarterly by management, inform COO
M Moderate risk:	Monitor and review at least quarterly by management
L Low risk:	Review periodically, no explicit action required.

APPENDIX 4 – KPMG Independent Audit Report



KPMG LLP
Hill Centre Tower II
1881 Scarth Street, 20th Floor
Regina Saskatchewan S4P 4K9
Canada
Telephone (306) 791-1200
Fax (306) 757-4703

Independent Limited Assurance Report to the Council of the City of Winnipeg Regarding the City Auditor's Audit of the Legal Services Department

To Bryan Mansky, City Auditor for the City of Winnipeg

We were engaged by the Audit Department of the City of Winnipeg to report on the Audit Department's *Audit of the Legal Services Department* dated February 2018 and the Audit Department's management statements contained therein, in the form of an independent limited assurance conclusion, that based on our work performed and evidence obtained, nothing has come to our attention that causes us to believe that the Audit Department's statement that the *Audit Report on the Legal Services Department* was conducted in accordance with government auditing standards and met the directives in the motion of Council approved on October 25, 2017, in all material respects, based on the "Review of Audit Documentation Checklist" contained within the 2011 Local Government Auditors Peer Review Guide (the "Criteria"), a copy of which is attached to the Audit Department's report, is not fairly stated.

Responsibilities of Management of the Audit Department

Management of the Audit Department is responsible for conducting the audit in accordance with the government auditing standards. This responsibility includes presenting an audit report that is free from material misstatement whether due to fraud or error, making estimates and judgments that are limited in the circumstances and for maintaining adequate records in relation to the audit engagement.

Management is responsible for ensuring that staff involved with conducting the audit are properly trained and that information systems are properly updated.

Our Responsibilities

Our responsibility is to review the audit and to report thereon in the form of an independent limited assurance conclusion based on the evidence obtained. We conducted our engagement in accordance with Canadian Standard on Assurance Engagements *CSAE 3000 Attestation Engagements other than Audits or Reviews of Historical Financial Information* issued by the Canadian Auditing and Assurance Standards Board. That standard requires that we plan and perform our procedures to obtain limited assurance about whether any matter has come our attention to cause us to believe that the audit was not conducted, in all significant respects with government auditing standards.

The firm applies Canadian Standard on Quality Control 1 and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

We have complied with the relevant rules of professional conduct applicable to the practice of public accounting and related to assurance engagements, issued by Chartered Professional Accountants

Saskatchewan, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

The procedures selected depend on our judgment, including the assessment of the risks of significant deficiencies in the audit.

Our engagement was conducted using the Criteria and included: assessing the appropriateness of the audit, the suitability of government auditing standards in the circumstances of the engagement, obtaining an understanding of the audit by enquiry of management, and comparison of certain underlying data in the audit working paper file to the sources from which they were obtained.

Limited assurance is less than absolute assurance. The procedures performed in a limited assurance engagement vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement; and consequently, the level of assurance obtained in a limited assurance engagement is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed.

Conclusion

Our conclusion has been formed on the basis of, and is subject to, the matters outlined in this report. We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our conclusion.

Based on our procedures performed, nothing has come to our attention to cause us to believe that the audit:

i) was not conducted in accordance government auditing standards, or
ii) did not meet the directives of the Council motion on October 25, 2017 to conduct a review of the City's Legal Services Department including an examination of the current systems and processes for pursuing legal action against contractors and develop recommendations to ensure that critical deadlines are not missed in the future.

Restriction on distribution and use of our report

Our review was undertaken to provide the Audit Department with additional limited assurance, based on the Criteria, that the Audit of the Legal Services Department has been performed independently, objectively, and met professional standards. Our report is intended solely for the City of Winnipeg Audit Department in this context and should not be used for any other purpose or by any other party for any other purpose.

KPMG LLP

Regina, Saskatchewan

January 29, 2018

APPENDIX 5 – *Government Auditing Standards* Checklist

I.A REVIEW OF AUDIT ENGAGEMENT DOCUMENTATION

ALGA Peer Review Guide (2011)
(Revision Date: 06-23-15)

PROJECT TITLE / NO._____

GENERAL STANDARDS:		**Yes**		**No**		**N/A**		**Reviewer Comments**
INDEPENDENCE								
1. The audit organization and the individual auditor, whether government or public, must be independent (GAS 3.02). Quality Control System procedures should include:								
a) Verify auditors were independent during the period covered by the subject matter of the audit and the period of the engagement (3.05)								
b) Identify threats to independence, evaluate their significance, determine if identified threats to independence have been eliminated or are at an acceptable level, and apply and document safeguards as necessary (3.08, 3.20-3.23, 3.24, 3.59)								
c) Evaluate the categories of threats to independence: self-interest, self-review, bias, familiarity, undue influence, management participation, and structural (3.14)								
d) Decline or terminate the audit if threats cannot be eliminated or reduced to an acceptable level. (3.25)								
e) Evaluate the impacts of threats identified after report issuance and take appropriate steps. (3.26)								
2. Evaluate the impact on independence of any previously performed nonaudit services before accepting the prospective audit. (3.42)								
3. When performance of a required nonaudit service could impair independence with respect to a required audit, disclose the nature of the threat that could not be eliminated or reduced to an acceptable level and modify the GAGAS statement accordingly. (3.44)								
PROFESSIONAL JUDGMENT								
4. Use professional judgment (includes exercising reasonable care and professional skepticism) in planning and performing audits and in reporting the results. (3.60, 3.61)								

GENERAL STANDARDS:		**Yes**		**No**		**N/A**		**Reviewer Comments**
COMPETENCE								
5. Assess skill needs to consider whether the essential skills match those necessary to perform a particular audit. (3.69, 3.70)								
6. Staff assigned to conduct an audit should collectively possess the technical knowledge, skills, and experience necessary. (3.72)								
7. Auditors performing financial audits or attestation engagements should be knowledgeable of applicable standards and competent in their application. (3.73-3.75)								
8. External/internal specialists assisting with or performing GAGAS audits are qualified and competent. (3.79-3.81)								

FINANCIAL AND ATTESTATION STANDARDS:		Yes		No		N/A		Reviewer Comments
AUDITOR COMMUNICATION								
9. Communicate pertinent information to individuals contracting for or requesting the engagement and to others as required. (4.03-4.04, 5.04-5.05)								
PREVIOUS AUDITS AND ATTESTATION ENGAGEMENTS								
10. Follow up on findings from prior audits/engagements. (4.05, 5.06)								
FRAUD, NONCOMPLIANCE WITH LAWS, REGULATIONS, CONTRACTS, AND GRANT AGREEMENTS, AND ABUSE								
11. *For examination level attestation engagements,* design the engagement to detect fraud and noncompliance that may have a material effect on the subject matter. If abuse is discovered, apply procedures to ascertain the effect on the subject matter or other data significant to the engagement objectives. (5.07, 5.09)								
12. Do not interfere with investigations or legal proceedings. (4.09, 5.10)								
ELEMENTS OF A FINDING								
13. Develop the elements of a finding that are relevant and necessary to achieve audit or engagement objectives. (4.10-4.14, 5.11-5.15)								
DOCUMENTATION								
14. *For examination-level attestation engagements,* prepare sufficient attest documentation, document supervisory review of evidence before the date of the report, and document any departures from GAGAS requirements. (5.16)								
15. Make appropriate individuals and audit or attest documentation available to other auditors or reviewers upon request, subject to applicable laws and regulations. (4.16, 5.17)								
REPORTING								
16. *For examination engagements,* report on significant deficiencies and weaknesses in internal control and instances of fraud, abuse, and noncompliance that are material to the subject matter. Reference any separate reports. (5.20-5.23)								
17. Report known or likely fraud, noncompliance, or abuse that is material to those charged with governance and when applicable, to external parties under specific circumstances. (4.25-4.26, 5.24-5.25)								
18. Develop the elements of the findings to the extent necessary to assist with understanding the need for taking corrective actions and making recommendations. (4.28-4.29, 5.27-5.28)								
19. Report known or likely fraud or noncompliance with laws,								

FINANCIAL AND ATTESTATION STANDARDS:		Yes		No		N/A		Reviewer Comments
regulations, contracts, or grant agreements or abuse to outside parties when: 1) management fails to report as required or 2) management fails to take timely and appropriate steps to respond. (4.30-4.32, 5.29-5.31)								
20. Report views and planned corrective actions of responsible officials. If comments are inconsistent or in conflict or actions are inadequate, evaluate validity of comments. If auditors disagree with comments, report reasons for disagreement. (4.33-4.39, 5.32-5.38)								
21. *For financial audits and examination engagements,* report the nature of and reason for omitted information. (4.40-4.44, 5.39-5.43)								
22. *For financial audits, and examination, review and agreed-upon attestation engagements,* submit reports to appropriate officials and make available to public. Document any limitation on report distribution. (4.45, 5.44, 5.52, 5.62)								
ADDITIONAL GAGAS CONSIDERATIONS FOR FINANCIAL AUDITS AND EXAMINATION ENGAGEMENTS								
23. *For examination engagements,* consider, preliminary judgments about attestation risk and materiality for attest purposes when planning the engagement. (5.46)								

PERFORMANCE STANDARDS:		Yes		No		N/A		Reviewer Comments
PLANNING								
24. Plan and document work necessary to define audit objectives, scope, and methodology such that work provides reasonable assurance that sufficient, appropriate evidence supports conclusions. (6.06, 6.07, 6.10)								
25. Assess audit risk and significance within the context of the audit objectives by gaining an understanding of the following:								
a) Nature of the program and user needs (6.11a, 6.13)								
b) Design and implementation of internal controls (6.11b, 6.16)								
c) Design and effectiveness of information system controls (6.11c, 6.24, 6.27)								
d) Legal, regulatory, contract, and/or grant agreement provisions, and potential fraud and abuse (6.11d, 6.28, 6.30-6.32, 6.34)								
e) Impact on ongoing investigation and legal proceedings (6.11e, 6.35)								
f) Results of previous audits (6.11f, 6.36)								
26. Identify potential criteria to the extent relevant to the audit objectives. Planning allows auditors to identify potential criteria and sources of evidence, and evaluate whether to use the work of other auditors or experts. (6.12 a-c; 6.37; 6.38; 6.40-6.42)								

PERFORMANCE STANDARDS:		Yes		No		N/A		Reviewer Comments
27. Determine the type and amount of evidence needed to obtain sufficient, appropriate evidence to address the audit objectives. Evaluate whether internal control or other program weaknesses are the cause when auditors conclude that sufficient, appropriate evidence is not available. (6.39)								
28. Extend audit procedures when there are indications that fraud or abuse significant to the audit objectives may have occurred; do not interfere with legal proceedings or investigations. (6.32; 6.34-6.35)								
29. Assess qualifications and independence of specialists. (6.12d, 6.43-6.44)								
30. Assign sufficient number of appropriately skilled staff and document work performed by specialists. (6.12d; 6.45-6.46)								
31. Communicate planning, performance, and planned reporting of the audit to those charged with governance (management, requestors, and others). Document communications. If the identity of those charged with governance is not clear, document the process used to make the identification. If the audit is terminated, document results, reason for termination, and communication to those charged with governance. (6.12e; 6.47-6.50)								
32. Prepare and update a written audit plan. (6.12f; 6.51)								
SUPERVISION								
33. Properly supervise staff. Review work performed and document review of work before issuing the audit report. (6.53-6.55, 6.83c)								
EVIDENCE								
34. Obtain sufficient, appropriate evidence to provide reasonable basis for findings and conclusions. (6.56-6.57)								
35. Document assessment that evidence taken as a whole is sufficient and appropriate for addressing audit objectives and supporting findings and conclusions. (6.58, 6.67, 6.69)								
36. Evaluate testimonial evidence and information provided by officials when used as evidence. (6.62, 6.65)								
37. Assess sufficiency and appropriateness of computer-processed information. (6.66)								
38. Based on the assessment of the evidence, apply additional procedures, redefine the audit objectives, or revise the findings and conclusions, if necessary. (6.71-6.72)								
39. Plan and perform procedures to develop the elements of a finding to address audit objectives and develop recommendations for corrective action. (6.73)								
DOCUMENTATION								
40. Prepare and maintain audit documentation related to planning, conducting, and reporting on the audit to support findings, conclusions, and recommendations before issuing the report. (6.79-6.83)								

PERFORMANCE STANDARDS:		Yes		No		N/A		Reviewer Comments
41. Document departures from GAGAS requirements and the impact on the audit and auditors' conclusions. (6.84)								
42. Make appropriate individuals and audit documentation available to other auditors or reviewers upon request, subject to applicable laws and regulations. (6.85)								
REPORTING								
43. Issue audit report, make the report available to the public, unless specifically limited, if audit is terminated, document results of work completed and reason for termination. (7.03-7.04, 7.06)								
44. If, after the report is issued, auditors discover they did not have sufficient, appropriate evidence, follow appropriate procedures. (7.07)								
45. Audit reports should contain the objectives, scope, and methodology of the audit and the audit results. In reporting methodology when sampling significantly supports findings, conclusions, or recommendations, include sample design, the reason it was chosen, and whether results can be projected to the population. (7.08-7.13)								
46. Present sufficient, appropriate evidence to support the findings and conclusions in relation to audit objectives. Describe any evidence limitations and deficiencies in internal control, etc. (7.14-7.18)								
47. Report scope of work on internal controls and any significant deficiencies found. Refer to separate written communication to officials in audit report. (7.19)								
48. Report likely fraud, illegal acts, and significant violations of contracts or grant agreements, or significant abuse. (7.21-7.22)								
49. Report known or likely fraud, illegal acts, violations of contracts or grant agreements, or abuse to any appropriate outside parties. (7.24-7.26)								
50. Report conclusions based on objectives and findings. (7.27)								
51. Recommend actions to correct identified problems and to improve programs and operations. (7.28)								
52. Use the language in GAS 7.30 to cite compliance with GAGAS in report when all applicable requirements are followed, disclose when not followed. (2.23-2.24, 7.08, 7.30-7.31)								
53. Include a copy of written comments from responsible officials or a summary of written or oral comments. Evaluate the validity of the comments and revise report as necessary. (7.08, 7.32, 7.34-7.35, 7.37-7.38)								
54. If information is prohibited from public disclosure or excluded from the report due to its confidential or sensitive nature, disclose that certain information has been omitted and the reason for its omission. (7.08, 7.39, 7.42-7.43)								
55. Submit report to those charged with governance, appropriate officials, and appropriate oversight bodies; document any limitation on report distribution. (7.44)								