

Subject: Proposed Town Solicitor Shared Services Agreement

Recommendation:

BE IT RESOLVED THAT Council receive Report #2020-0032 ;

AND THAT Council approve the creation of a part-time Town Solicitor position in conjunction with the Township of Wainfleet and the Town of Fort Erie;

AND THAT the Chief Administrative Officer and Human Resources Coordinator be directed to initiate the recruitment process.

Background:

During the closed session of the December 2, 2019 Special Meeting of Council, Town Council approved in principle (only) the creation of a Town Solicitor position and the Chief Administrative Officer was instructed to investigate the degree of interest of local government institutions in potentially sharing a Town Solicitor. Two willing and interested municipal partners have been identified. This report is being written to update Town Council and obtain instruction on whether to proceed.

Since 2014, the Town of Fort Erie has employed a Town Solicitor on a part-time basis, typically working two or three days per week. That individual is set to retire, requiring the Town to find a new solicitor; as such the Town of Fort Erie is a potential partner in hiring a new and shared Town Solicitor. The other municipality interested in participating in this endeavor is the Township of Wainfleet. Wainfleet's administration has conducted a business case analysis, similar to that by Pelham, and concluded that it has demand for the equivalent of one day per week legal services.

Analysis:

The three Chief Administrative Officers have met and held multiple discussions on pragmatic, operating considerations. The CAOs are essentially in agreement that the Town Solicitor would be a direct employee of the Town of Pelham. Pelham would therefore incur all of the immediate employment obligations such as

provision of benefits, OMERS pension plan, law society dues, training budget, etc. The other two municipalities will ultimately be invoiced for their proportionate share (40% to the Town of Fort Erie, 20% to the Township of Wainfleet) of total employment costs.

Each municipality will provide office space to the Town Solicitor, inclusive of phone and computer. In Pelham, this office space will be created by transforming the "North Wing Meeting Room" into an office. For those occasions where the lawyer needs to work for one municipality, but is physically located at another, arrangements shall be made for remote log-in capabilities. Each of the three municipalities happens to employ at least one person who is a former law clerk, and so has an employee with the skills necessary to support the lawyer in creating legal documents, should occasion demand.

The Town Solicitor will track her/his time by Municipality (and further by file, if appropriate). Invoices will be submitted to the municipal partners quarterly. It is anticipated that the exact amount of time worked for any municipality will vary from month-to-month, but is expected to ultimately result in the 40-40-20 split based on historical data. Functionality of the working relationship will be routinely reviewed by the CAOs at the six and twelve month mark. If the percentage paid by each municipality requires future adjustment, the issue can be addressed at that time through both contractual and budgeting processes.

Performance reviews and evaluations will be conducted by the Town of Pelham's CAO, with input from the other two CAOs. In the event of serious problems or potential need for discipline, the CAOs will consult with each other prior to taking any disciplinary action.

Both the Towns of Pelham and Fort Erie hold their council and committee meetings on Monday nights. The Township of Wainfleet's meetings occur on Tuesday nights. Pelham's meetings start before Fort Erie's, and it is common for Pelham to start even earlier when legal advice is going to be received. The CAOs of Pelham and Fort Erie are entirely confident that the Town Solicitor's time can be equitably shared by effectively communicating and negotiating schedules.

Financial Considerations:

As Council will recall, the previous report on this topic estimated that an appropriate hourly cost would be approximately \$80 per hour. Fort Erie's experience has been more in line with a cost of \$90 per hour. The CAOs are in mutual agreement that employment costs should be consistent with the skill and experience level of the successful candidate, so the exact starting wage will be

subject to negotiation, but in no case will the total employment cost exceed \$90 per hour (subject to future inflationary increases).

While the potential long-term savings of replacing \$350 per hour costs with \$80-\$90 per hour legal costs are clearly significant, during the transitional phase the Town's legal spend is likely to remain consistent. This will occur because external counsel will continue to work on files, at their existing rates, that would now otherwise be handled by the Town Solicitor. While the Town Solicitor is expected to take over all routine legal matters (leaving conflict work and specialized work to Pelham's highly capable external counsel) as they arise, there will be an estimated six to nine month period of time in which the Town cannot achieve the anticipated financial benefits.

Alternatives Reviewed:

Maintaining the status quo is a viable alternative. The Town has been and continues to be well served by external legal counsel. This proposal is anticipated to produce savings for the municipality and enhance institutional capacity, but there is no statutory or business requirement to pursue this initiative. If Council prefers to maintain the status quo, it can simply receive this report and take no further action.

Strategic Plan Relationship: Strong Organization

In the (anticipated) event that the Town Solicitor will become involved in insurance litigation files, the person will inevitably become a corporate champion for risk management best practices. Further, a staff lawyer would be involved in various policy and bylaw initiatives at the time of inception, and is likely to demonstrate value by providing advice that can lead to better work product that more fulsomely protects the Town's legal and corporate interests. As the previous report identified, external counsel will continue to be needed and utilized, albeit at a reduced volume. To the extent that routine legal work can be done at roughly 20-25% of the current cost, this proposal also supports financial sustainability.

Consultation:

SLT, the Human Resources Co-ordinator, the CAO of the Town of Fort Erie and the CAO of the Township of Wainfleet were consulted in the preparation and drafting of this report.

Other Pertinent Reports/Attachments:

The December 2, 2019 Town Solicitor Proposal is attached for Council's convenience.

The Town of Fort Erie Job Description is also attached. If this report is approved, this document will be slightly modified for the Town of Pelham's purposes.

Prepared and Submitted by:

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Chief Administrative Officer