

Subject: Proposal for Town Solicitor Position**Recommendation:**

BE IT RESOLVED THAT Council receive Report #2019-0144 ; and THAT Council approve in principal the establishment of a Part-time Town Solicitor Position.

Background:

The Town of Pelham has experienced elevated levels of legal expenses during the past few years. The purpose of this report is to make a business case for the creation of a permanent, part-time Town Solicitor position, with the twin goals of reducing cost and increasing institutional capacity. Essentially, the business case is predicated upon replacing \$350 per hour bills for external legal counsel and \$100 per hour bills for external paralegals with a staff lawyer who will cost approximately \$57 - \$78 per hour in total employment cost. This course of action would not end the Town's working relationship with external legal service providers, but would reduce their utilization.

Council is being asked to approve in principle the creation of Town Solicitor position for either two or three days per week (16-24 hours per week). Should such approval be granted, staff will formally approach pre-selected area municipalities so as to determine whether a shared employee model can be accomplished. The Chief Administrative Officer has reason to believe that the civic administration in several area municipalities and/or local government bodies have interest in collaborating with Pelham in pursuit of a shared staff lawyer. Because of previous success with a similar endeavor elsewhere, and given the Chief Administrative Officer's familiarity with the subject matter, it was decided that this report should first be brought to Pelham Town Council so as to determine viability of concept, prior to obtaining approval elsewhere.

Analysis:

Since at least 2016, the Town of Pelham has exceeded its legal services budget.

The 2019 data is incomplete, however actual expenditure is expected to once again be in the \$200,000 range as a direct result of the various items of Cannabis related litigation, challenges to the Development Charges By-Law, the unionization of some Town staff and anticipated resulting grievances and miscellaneous litigation. Since most of these items will carry on into 2020, there is currently no reason to anticipate a reduction in next year's legal spend either.

The table below highlights both recent annual legal budgets and recent annual actual legal expenditures:

Table 1.0: Town of Pelham Legal Expenditures (Excluding Insurance)		
Year	Budgeted Amount	Actual Expenditures
2016	\$102,500	\$111,607
2017	\$102,500	\$285,522
2018	\$102,500	\$207,089
2019	\$152,500	\$107,952 to November 21, 2019

Limited Scope

It is important to clarify that this proposal is not meant to fully replace the use of external legal counsel. No single staff lawyer (full-time or part-time) can reasonably be expected to handle all of the Town's legal work – some work will require specialized knowledge, some will have the potential to create conflicts for the lawyer, and depending on timing there may well be workflow issues.

In the event that Council endorses the recommendations of this report, the Town's valued relationship with its existing external legal counsel will continue. All files currently being handled by the external counsel would remain with them, and the current service providers will continue to be relied upon for quality advice in areas in which the Town Solicitor lacks expertise. What is envisioned is that the majority of routine, transactional type work will be kept in house so as to achieve the potential cost savings identified in this report.

Furthermore, based on the current volume of work, it is not being suggested that the Town Solicitor position would constitute full-time work. The Town appears to generate enough work to keep a lawyer busy for two days per week (assuming a 46-week work year, with eight-hour work days, working 2 days per week, equals 736 hours). Based on recent years' billings, this would cover a large proportion of billable hours, but also leave work available for external counsel, as previously discussed. There exists an arguable case for using a staff lawyer three days per week, but this may be ambitious during the transitional introductory phase.

Pragmatic Considerations

While some details can only be worked out when other municipal partners have been confirmed, it is anticipated that the Town Solicitor would spend two days per week working at Pelham Town Hall. The current "North Wing" meeting room could easily be transformed into appropriate office space. The Town Solicitor would be a direct report to the Chief Administrative Officer and would be considered part of the Office of the CAO for administrative purposes and part of the Senior Leadership Team for management purposes. Support services for the Town Solicitor could come from a combination of the Executive Assistant to the Mayor/CAO and the Deputy Clerk, who has professional experience as a Legal Assistant. The Office of the CAO area is already equipped for secure file storage and offers an appropriate measure of privacy for sensitive work.

Type of Work to be Conducted

Ultimately, any staff lawyer requires the capacity to work as a generalist. Like other municipalities, the Town operates in many fields which touch upon various areas of the law and so this proposed position is not appropriate for someone who wishes to work as a specialist in only one area.

Past experience clearly demonstrates that Pelham consistently spends money on labour & employment advice, real estate and real property advice and planning & municipal law. Beyond those, there has been consistent, but low demand need for corporate/solicitor type work. Fortunately, this means that with the exception of lawyers who primarily practice in family or criminal law, this position could be held by lawyers with a variety of difference backgrounds, so long as they either have broad legal exposure or a willingness to learn new areas of law. The Chief Administrative Officer is prepared to offer mentorship to a junior candidate in labour & employment or municipal law if such is required.

While it is generally thought that a mid-level lawyer would be the ideal hire, this position could also be attractive to junior counsel (who would start at a lower rate of pay) or the position could also be attractive to a solicitor who would like to work less than full-time hours.

Because Pelham can essentially afford to be flexible in the type and level of experience in the lawyer that is hired, this will allow for more effective negotiations with potential municipal partners, some of which may have stronger preferences for a background in planning law or labour law, or corporate law, depending upon their major challenges and spending patterns.

Context

There is no bright line rule for how large a municipality should be so as to justify establishing a staff lawyer position. Population tends to be a good measure of demand upon municipal services, but so too is economic growth, as planning and development work frequently causes significant amounts of litigation and legal transactions. The Town of Pelham would be the direct employer and would receive financial transfers from the partner municipalities proportionate with service provision.

Table 2.0 contains a list of reasonably comparable municipalities with their populations and staff lawyer compliments.

Table 2.0: Lawyers Per Capita			
Location	Population	# of Lawyers	Staff Lawyers Per Capita
Brant County	37,686	2	1/18,843
Chatham-Kent	103,000	4	1/25,570
Innisfil	36,370	1	1/36,370
Lakeshore	36,734	1	1/36,734
Middlesex	71,551	3	1/23,850
North Bay	51,553	2	1/25,776
Sarnia	71,594	2	1/35,797
St. Catharines	133,113	3	1/44,371

By way of contrast the three largest single or lower tier municipalities in the Province not to have a staff lawyer are Welland (52,000), Timmins (41,788) and Woodstock (31,564).

The Town of Pelham has roughly 17,500 residents, making it fall below the threshold of a population base that can justify employing a full-time lawyer. The tension between not being large enough to justify a full-time position, but nevertheless engaging high levels of legal expenditure, as indicated in Table 2.0, is that the Town both lacks the staff capacity associated with having a lawyer on the team, but also currently pays significant fees for legal services. This is essentially the worst of both worlds – for the amount of money being spent, staff and Council should have ongoing access to a legal professional without having to incur an hourly bill.

Financial Considerations:

The proposed job description has been appended to this report. After being run through the Town's job evaluation process, it has been determined that an appropriate salary range is Grade 13, which carries a salary range of \$90,269 - \$129,761. When the cost of benefits, law society dues and the like are added, total employment cost is expected to be in the range of \$120,000 - \$163,000 (approximately \$57/hr - \$78/hr).

An exact quantum of potential savings cannot be identified because of the variables of legal services demand and the unknown of the lawyer's exact starting wage. However, conservatively assuming that the staff lawyer would start at the highest wage, and would provide limited services that only avoid 400 hours of external billing, the potential savings would be approximately \$43,600 per annum (calculated in the following manner: \$350/hour - \$78/hour x 400 hours – 2 days per week, being employment cost of 40% x \$163,000). In the event that legal billings continue at the rate of the past three years, the potential for cost savings increases dramatically.

The Unquantifiable Benefits

While the expenditure and potential savings analysis is fairly straightforward – the Town can spend less money to have a lawyer provide services than it is currently paying for external paralegals – much of the benefit of a staff lawyer is difficult to quantify. Having a legally trained person attend meetings and contribute to such work product as an RFP or policy development throughout the project offers many opportunities to avoid costly mistakes or make better informed decisions. The capacity for staff to ask a quick question and make less risky decisions has tremendous upside – but defies easy quantification.

Exploratory conversations have occurred with the Town's insurance broker regarding the potential for utilizing the Town Solicitor to handle litigation files that are below the Town's deductible. This has the potential to reduce the cost of claims handling, and is a course of action that has been taken by other municipalities in Ontario. This too cannot presently be quantified because of several variables, but represents a real opportunity for further potential cost savings that have not been factored into this report.

For the past five months, the Town of Pelham has begun to derive the benefits of having a legally-trained employee, including the capacity to go into closed session to ask for impromptu legal advice, and some better informed review of Town By-

laws and contracts. This benefit would be significantly magnified by having a devoted staff resource.

Alternatives Reviewed:

Maintain Status Quo – the benefit of the status quo is that the Town is receiving quality legal advice from external counsel. The Town only pays for services that it uses, and there is a high level of trust between senior staff and external counsel. The status quo is not cost efficient, but the service level is quite good.

Hire a Full-time Town Solicitor – while having a full-time resource would be wonderful to address challenges to existing staff workload, at present levels of legal spend it is not clear that such staffing is fully justified. It is more appropriate for Pelham to begin with a part-time position and then if future demand increases to the point that a stronger case can be made transition into a full-time position.

Strategic Plan Relationship: Strong Organization

A Town Solicitor, even on a part-time basis, would provide a significant increase to the Town's institutional capacity and magnify staff capabilities in addressing future challenges.

Consultation:

Consultation was made with the Senior Leadership Team and various area CAOs.

Other Pertinent Reports/Attachments:

Proposed Job Description

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