

Section I – Items for the Board of Directors Action

TO: Chair and Members of the Board of Directors
Meeting #3/20, Friday, April 24, 2020

FROM: Michael Tolensky, Chief Financial and Operating Officer

**RE: REPORT ON TRCA IN-HOUSE LEGAL CAPACITY AND STATUS OF
CONTINUOUS IMPROVEMENT EFFORTS**

KEY ISSUE

Status update on Toronto and Region Conservation Authority (TRCA) efforts to build in-house legal capacity and investigate further potential cost savings through efficiencies and cost recovery.

RECOMMENDATION

THAT this staff report regarding TRCA's in-house legal capacity and cost saving measures involving partner municipalities be received;

AND FURTHER THAT staff be directed to examine opportunities for coordinated representation of TRCA's interests for Local Planning Appeal Tribunal (LPAT) matters where feasible.

BACKGROUND

TRCA hired its first in-house legal counsel position in the organization's history in February 2019. This role provides legal advice and support to the Board of Directors, TRCA's Senior Leadership Team and staff across all divisions in respect of contracts, agreements, claims, litigation, policies and procedures, legislation, land use and environmental planning matters, real estate matters, and oversees TRCA's risk management and insurance programs.

Having in-house legal counsel is a best practice for an organization of TRCA's magnitude and was further driven by an increase in the scope and complexity of TRCA's operations. TRCA's 2020 annual budget, which includes projected expenses in excess of \$200 million represents an increase of over 100% from five years ago (2016), primarily driven by construction contracts for TRCA projects and fee-for-service agreements with partner municipalities.

TRCA expended over \$1 million in external legal fees in 2018.

During discussions with the Board of Directors on various items, questions have been asked on whether there is further opportunity to reduce or share costs related to legal services. This status update helps to address those questions.

RATIONALE

Legal services are a corporate service within TRCA's Property and Risk Management business unit. Direct reports to the Legal Counsel position include a Risk Advisor and a Law Clerk. The Risk Advisor is responsible for administration of claims and insurance matters and coordinating TRCA's risk management program. The Law Clerk is a new one-year contract position that will enable property conveyances and other land transactions, registrations, title searches and lien checks to be completed in-house. The Law Clerk will also assist with other contracts and agreements, as assigned.

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Legal services provided in-house include:

- Negotiating, drafting and approving contracts and agreements, including Service Level Agreements and Management Agreements with municipalities;
- Legal advice on planning matters, including development applications and appeals before the Local Planning Appeal Tribunal;
- Real property matters, including drafting and review of easement agreements, restrictive covenants and leases;
- Advice on legislation including the *Conservation Authorities Act*, *Planning Act*, *Environmental Assessment Act*, *Municipal Freedom of Information and Protection of Privacy Act*, *Conservation Land Act* and *Construction Act*, and
- Retaining external counsel and managing associated legal accounts.

TRCA retains external legal services through a Vendor of Record (VOR) arrangement with several full service law firms. Currently, TRCA outsources human resources matters, real estate transactions, complex agreements, specialized legal advice, and litigation including insured claims. The VOR procurement process was conducted in 2016 and existing agreements cover the period until January 31, 2021. A new procurement process will be conducted in 2020, and new agreements will in place when existing agreements expire. A review of external legal expenditures since 2016 will be conducted to identify cost efficiencies and inform the procurement process.

The cost of external legal services is born by TRCA with limited exceptions, such as defence costs for insured claims and land transfers with municipalities. Bringing basic real estate services and transactions in-house will decrease external legal expenditures. Further, there is opportunity to consider cost recovery fees for property and legal services as part of updates to TRCA fee schedules, once *Conservation Authority Act* amendments come into force.

One opportunity that has been discussed is the notion of sharing the costs of external legal counsel with partner municipalities, if the municipality and TRCA are aligned. While this measure could help address some situations where there is alignment between partner municipality and TRCA, it would remove or limit TRCA's ability to act independently from the municipality if there was a change in direction by either party. While a joint retainer of counsel may be possible where a settlement is likely, it is not without risks. Staff will consider this opportunity based on various factors in the future based on the specific situation.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategy set forth in the TRCA 2013-2022 Strategic Plan:
Strategy 7 – Build partnerships and new business models

FINANCIAL DETAILS

As legal expenditures exceeded \$1 million in 2018, staff project that in-house legal counsel will result in cost savings from completing selected functions internally. The goal is to advance a business case through a future budget process to make the Law Clerk position permanent, through bringing certain real estate services and transactions in house.

DETAILS OF WORK TO BE DONE

Activities to continue to build legal services capacity include:

- Conduct review of external legal expenditures under the existing VOR arrangement.
- Report to Board of Directors on results of the VOR procurement process and execute

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- new agreements with external legal firms.
- Explore opportunities to coordinate legal representation and share costs with municipalities, in particular for low risk hearings.
- Subject to *Conservation Authorities Act* changes and regulations, bring forward for consideration in TRCA's fee schedules proposed fees for legal agreements and land transactions on a cost recovery basis.

Report prepared by: Barbara Montgomery, extension 5682

Email: barbara.montgomery@trca.ca

For Information contact: Barbara Montgomery, extension 5682

Email: barbara.montgomery@trca.ca

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