



REPORT FOR ACTION

Standing Authority for City Solicitor to Execute Tolling Agreements

Date: September 4, 2019

To: General Government and Licensing Committee

From: City Solicitor

Wards: All

SUMMARY

This report is to clarify the City Solicitor's authority to, in appropriate circumstances and in consultation with the appropriate City of Toronto staff, enter into agreements to suspend the running of limitation periods for limited periods (known as "tolling agreements").

Consistent with her existing authority, upon termination of any tolling agreement, the City Solicitor will bring or respond to legal proceedings or report to City Council, as necessary and appropriate.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council grant standing authority to the City Solicitor, in consultation with the appropriate Division Head, the Deputy City Manager, or the City Manager, to enter into agreements to suspend the running of limitation periods for limited periods (known as tolling agreements) with people or companies from whom the City of Toronto may face a claim or against whom the City has, or may have, a claim on terms satisfactory to the City Solicitor.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendation in this report.

DECISION HISTORY

At its meeting on October 26 and 27, 2009, Council granted standing authority to the City Solicitor, in consultation with the responsible operating Division Head, Deputy City

Manager or the City Manager, to refer contractual disputes to arbitration, where the amount in issue, exclusive of interest, costs, and arbitrator's fees, is \$500,000.00 or less. See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM25.8>, GM25.8, Standing Authority for City Solicitor to Submit Contractual Disputes of \$500,000.00 or Less to Arbitration.

At its meeting on June 23, 2008, Council granted the City Solicitor standing authority to, among other things, commence, settle or terminate legal actions to recover monies owed to the City with respect to any type of claim, where the amount sought to be recovered, exclusive of interest or costs, is \$500,000.00 or less. See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.GM15.16>, GM15.16, Standing Authority for the City Solicitor to Commence Actions to Recover Claims Involving Amounts of \$500,000 or less.

At its meeting on April 23 and 24, 2007, Council granted the City Solicitor standing authority, in consultation with the General Manager of the appropriate Division, to enter into indemnification agreements with or commence legal proceedings against individuals or companies that may have caused or contributed to contamination of City-owned property, among other things. See: <https://www.toronto.ca/legdocs/mmis/2007/cc/minutes/2007-04-23-cc07-mn.pdf>, Item 7.38, Standing Authority for City Solicitor to Recover Costs for Clean Up of City-Owned Contaminated Lands.

COMMENTS

Tolling Agreements Operate to Freeze the Limitation Period for a Time

Under the Limitations Act, most legal actions must be commenced within 2 years of the date on which the party discovers that they have a legal cause of action. Actions not commenced within the applicable limitation period will be dismissed by the court.

A tolling agreement is a contract between parties to suspend the running of the limitation period. It allows parties more time to assess their legal position.

Parties may want more time to consider whether to commence legal proceedings because, for example:

- a. complex negotiations are ongoing,
- b. more information is required to understand the source or magnitude of the problem and whether or how it may be addressed, or
- c. more time is required to evaluate the implications of other work or proceedings that are ongoing (such as the completion of related work, outstanding regulatory approvals sought, and the like).

A tolling agreement may expire on a specific date agreed upon or be terminated by any party to it on written notice, as specified in the agreement itself. When it is terminated, the “freeze” on the limitation period ends.

During the term of the tolling agreement, all the rights and liabilities that the parties signing the tolling agreement had as at the date the agreement was entered into are preserved.

When the tolling agreement is terminated and the limitation period begins to run again, the parties must then either abandon the matter or commence legal proceedings, if they have not achieved a satisfactory settlement.

Tolling Agreements Serve Useful Purposes

The ability to enter into tolling agreements serves a useful purpose in complex matters.

For example, where there is potential environmental contamination, substantial time may be required to have the appropriate investigations carried out to delineate the scope and complexity of the contamination and what the remediation options are. The property owner's potential damages may also be impacted by the issuance or denial of regulatory approvals by other levels of government. In these cases, providing the City and other property owner(s) more time to evaluate the situation potentially reduces risks to the City and legal costs.

Another example where tolling agreements may be useful is in complex construction or building matters where multiple parties are attempting to negotiate a resolution or complete additional work as a means of mitigating the impact of known issues. A tolling agreement preserves the parties' rights while other work is completed, potentially reducing the number or magnitude of the issues.

The City has Previously Entered into Tolling Agreements

The City has previously entered into tolling agreements in respect of specific matters. Historically the City has done so when, the City Solicitor, in consultation with the General Manager of the relevant City division, the Deputy City Manager, or City Manager, as appropriate, considers it to be a reasonable risk mitigation and cost containment measure.

In recent years, the City has begun receiving more requests for tolling agreements from various parties. Therefore, the City Solicitor is seeking to create an explicit standing authority making her authority to enter into tolling agreements clearer.

Upon Termination of A Tolling Agreement

Where the City enters into a tolling agreement and it is subsequently terminated, the City Solicitor's standing authority to commence legal proceedings, as summarized in the reports referenced in the Decision History above, may apply. The City Solicitor, in consultation with the appropriate Division Head, Deputy City Manager, or City Manager, will make this decision at the appropriate time, as is currently done.

Where the City Solicitor recommends legal action in situations to which her standing authority does not apply, the City Solicitor will report to Council, as is currently done.

CONTACT

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SIGNATURE

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