



Staff Report

Administration

Report To: Special Meeting of Council
Meeting Date: September 23, 2019
Report Number: FAF.19.200
Subject: Execution of Agreement between Michael Seguin and Town of The Blue Mountains
Prepared by: Shawn Everitt, Chief Administrative Officer

A. Recommendations

THAT Council receive Staff Report FAF.19.200, entitled "Execution of Agreement between Michael Seguin and Town of The Blue Mountains";

AND THAT Council authorize the Mayor and Clerk to execute an Agreement with Michael Seguin as contained in Attachment 1 of this report.

B. Overview

This report recommends that authorization be given to direct the Mayor and Town Clerk to execute the attached Agreement with Michael Seguin.

C. Background

Council received correspondence from Legal Counsel for Michael Seguin at its open session of Council on January 16th, 2019 and directed staff as follows:

THAT Council receive the correspondence from Scheifele Erskine and Renken dated January 7, 2019 regarding former Councillor Michael Seguin;

AND THAT Council direct staff to:

- a) Investigate and respond to Michael Seguin's coverage under the Town's insurance policy;
- b) Respond to the correspondence regarding the request for specific records;
- c) Engage legal advice from a solicitor that has not been involved with the complaint or file, or ever provided any legal advice or services to the Town in the past, who also has integrity commissioner experience; and
- d) Investigate the Town's potential exposure in response to the correspondence received and report back to Council.

D. Analysis

This report is a formal follow up to the motion noted in the Background section of this report that provided direction to staff along with Town Legal Counsel.

As a result, to the work completed through the process outlined in the above motion, Town staff along with Legal Counsel were directed to negotiate with Legal Counsel for Mr. Seguin to reach a formal agreement.

Town Council has been consulted and provided clear direction throughout the entirety of the negotiation process.

The attached Agreement has been jointly agreed upon with all parties including the Joint Statement. The Agreement and Joint Statement are appended to this report to provide clear and transparent communications and information sharing.

As outlined in Section 6 of the Agreement, it is agreed that neither Party will provide further comment on this matter.

In addition, Section 6 and Section 7 of the attached Agreement refer to the Town waiving enforcement of the Cost Award along with conditions for both Parties of the Agreement. The Cost Award being \$20,000 not being enforced.

E. The Blue Mountains Strategic Plan

- Goal #2: Engage Our Communities & Partners
- Objective #1 Improve External Communication with our Constituents

- Goal #4: Promote a Culture of Organizational & Operational Excellence
- Objective #1 To Be an Employer of Choice
- Objective #2 Improve Internal Communications Across our Organization
- Objective #3 To Consistently Deliver Excellent Customer Service
- Objective #4 To Be a Financially Responsible Organization

F. Environmental Impacts

None at this time

G. Financial Impact

\$26,500 will be funded through the Town's Legal Budget

As noted in the Analysis Section of this report, the Agreement does waive the enforcement of \$20,000 cost award.

H. In consultation with

Council

Director of Financial & IT Services

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Mayor Soever, mayor@thebluemountains.ca.

J. Attached

1. Agreement between Town of The Blue Mountains and Michael Seguin
2. Correspondence of January 7th, 2019 received from Scheifele, Erskine and Renken Barristers
3. Certified Council Resolution dated January 16, 2019

Respectfully Submitted,

Shawn Everitt
Chief Administrative Officer

For more information, please contact:
Shawn Everitt, Chief Administrative Officer
cao@thebluemountains.ca
519-599-3131 extension 234

AGREEMENT

THIS AGREEMENT MADE BETWEEN:

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter the "**Town**")

-and-

MICHAEL SEGUIN
(hereinafter "**Michael**")

Together hereinafter referred to collectively as the "**Parties**" or individually as "**Party**"

WHEREAS Michael served as an elected Member of Council for the Town during the 2014 to 2018 Council term;

AND WHEREAS Michael, while serving as Councillor, disputed the process used in relation to the investigation of complaints made by certain members of Town Staff in May of 2016 and advanced against him under the *Occupational Health and Safety Act* (OHSA), as well as those complaints brought forward before the Office of the Integrity Commissioner (together "**the Process**").

AND WHEREAS Michael filed an application for Judicial Review of the Process before the Divisional Court of Ontario (the "**Application**"), which he subsequently abandoned in September of 2018, resulting in the awarding of costs by the Honourable Justice Lemay (the "**Cost Award**");

AND WHEREAS the Town and Michael wish to put an end to the dispute arising from the Process, the Application and the Cost Award with a view to settling all issues arising therefrom (the "**Settlement**").

NOW THEREFORE for good and valuable consideration and the payment of Two Dollars [\$2.00], the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto, hereby agree as follows:

1. The above recitals are true and accurate.
2. The Town covenants and agrees, on behalf of itself, its successors and assigns, to indemnify and save harmless Michael, his servants and agents, from and against any and all actions, claims and demands whatsoever which may arise either directly or indirectly by reason of any action of the Town or on its behalf in connection with the Process or the Application, provided the subject matter of such action, claim or demand was not caused intentionally or through gross negligence on the part of Michael, or his servants, agents or assigns.
3. The Town, on behalf of itself, its successors and assigns, releases from and agrees not to make any claims, suits, actions and demands whatsoever against, or to seek any damages from Michael for any damages or losses it may suffer, as a result of the Process or the Application, provided the subject matter of such action, suits, claims or demands was not caused intentionally or through gross negligence on the part of Michael, his servants or agents or sub-contractors.
4. Michael covenants and agrees, on behalf of himself, his successors and assigns, to indemnify and save harmless the Town, its servants and agents, from and against any and all actions, claims and demands whatsoever which may arise either directly or indirectly by reason of any action of Michael or on his behalf in connection with the Process or the Application, provided the subject matter of such action, claim or demand was not caused

intentionally or through gross negligence on the part of the Town, or its servants, agents or assigns.

5. Michael, on behalf of himself, his successors and assigns, releases from and agrees not to make any claims, suits, actions and demands whatsoever against, or to seek any damages from the Town for any damages or losses he may suffer, as a result of the Process or the Application, provided the subject matter of such action, suits, claims or demands was not caused intentionally or through gross negligence on the part of the Town, its servants or agents or sub-contractors.
6. The Parties agree that, for all time, neither will publicly or privately speak about or in any way disclose any information relating to the confidential discussions and correspondence between them leading up to the Settlement, other than the content contained in the Agreement itself, which will be made public.
7. So long as Michael is not in breach of any part of Section 6 of this Agreement, the Town will forever waive enforcement of the Cost Award.
8. Without admitting any liability, but simply as an acknowledgement of the costs he has incurred in relation to the Process and subsequent Application, and as a gesture of good faith, the Town will pay \$26,500.00 to Michael, according to the following schedule:
 - a) \$13,250.00 upon the execution of this Agreement; and
 - b) \$13,250.00 on or before January 1, 2020.
9. The Parties will issue a joint statement that can be distributed to members of the community, announcing the resolution of the dispute, but without any admission of liability. The joint statement shall be in the form attached to this Agreement as **Schedule "A"**.
10. The breach of any term of this Agreement by Michael may, at the discretion of the Town, require the return of any monies paid to him under this Agreement, the forfeiture of entitlement to any further payments, and the Town will be at liberty to seek enforcement of the Cost Award. For greater certainty, any allegation that Michael has breached the confidentiality and non-disclosure provisions contained in this Agreement will need to be supported by *prima facie* evidence that Michael was the source of any public or private disclosure of the details leading up to the Settlement, failing which the consequences of breach as contemplated under this section will not apply.
11. The Parties agree that this Agreement will be attached to the Joint Statement, attached hereto as Schedule "A".
12. This Agreement shall enure to the benefit of and be binding upon each of the parties hereto, Michael's heirs, executors, administrators, successors and assigns, as well as all employees and Council members of the Town, both present and future.
13. This Agreement comprises the whole of the understanding between the Parties and are not subject to or in addition to any representations, warranties or agreements, whether written, oral or implied.
14. This Agreement may be executed in counterparts and may be delivered to the other parties by personal delivery.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

DATED this day of September, 2019.

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Alar Soever – Mayor

MICHAEL SEGUIN

Corrina Giles – Clerk

SCHEDULE “A” – JOINT STATEMENT

The Council of the Town of The Blue Mountains and former Councillor Michael Seguin are pleased to announce that they have reached an agreement resolving all differences arising from Mr. Seguin’s tenure and subsequent resignation from Council. Following an honest and productive discussion, the agreement specifies that neither party bears any fault or liability for the events leading to Mr. Seguin’s Application for a Judicial Review of the procedural processes used under the *Occupational Health and Safety Act* to investigate and adjudicate the complaints against him while a sitting Councillor, including all complaints brought forward before the Office of the Integrity Commissioner. The Settlement provides for a fair and reasonable payment by the Town to Mr. Seguin in the amount of \$26,500.00 to compensate him for the costs he incurred as part of his legal challenge. The Town has also agreed to waive the enforcement of a cost award issued against Mr. Seguin as a result of the abandonment of his court challenge.

In reaching this agreement, the Town wishes to thank the former Member of Council for his years of public service. At the same time, Michael would like to express his gratitude to the current Council for acknowledging his disappointment with the inquiry process and assisting him in the partial recovery of his costs.

The parties will have no further comment in this matter or on the contents of the Settlement Agreement.

Scheifele, Erskine & Renken *

Barristers & Solicitors

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Please reply to:

24 Bruce Street South,
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Please reply to:

January 7, 2019

Town of the Blue Mountains
32 Mill Street, P.O. Box 310
Thornbury, Ontario
N0H 2P0

Attention: Alar Soever, Mayor

Attention: Shawn Everitt, Interim Chief Administrative Officer

RE: Former Councillor, Michael Seguin

Please be advised that our firm represents Michael Seguin as his solicitors and barristers in a variety of matters. Most recently, Michael Seguin and his wife, Catherine Sholtz, have become the subject of a new lawsuit commenced by the former Chief Executive Officer and Mayor of the Town of The Blue Mountains, John McKean, and the former Deputy Mayor of the Town of The Blue Mountains, Gail Ardiel (hereinafter the "Plaintiffs"). The action is founded on allegations of defamation pursuant to the *Libel and Slander Act* of Ontario. The allegations were raised and communicated to our clients via correspondence prior to the municipal election while both Plaintiffs sat on Council. As named Defendants, Mr. Seguin and Ms. Sholtz are now required to formally respond to the action, bearing Court File No. CV-18-179 (Owen Sound). For your reference, I enclose both the Notice of Action and Statement of Claim.

The primary focus and subject of the Plaintiffs' claims relate to events which are alleged to have occurred during Mr. Seguin's time as Town Councilor. Therefore, I write to request any details relating to possible coverage afforded to Mr. Seguin under the Town's relevant insurance policies. Specifically, I am looking to clarify whether Mr. Seguin would have been entitled to liability coverage at the time of his tenure on Council and whether that coverage might extend to matters now being raised after the fact, the majority of which, as mentioned, are alleged to have taken place during that time.

To be clear, my clients vigorously deny the claims of defamation raised by the Plaintiffs. During the last number of years, it is our belief that a growing body of evidence has emerged which might support the truth of certain statements now being labelled as defamatory by the Plaintiffs. We are of the view that this evidence is largely within the Town's possession and/or access, and therefore would be obtainable through the discovery phase of litigation pursuant to the *Rules of Civil Procedure*. In short, Mr. Seguin's opportunity to provide a full defence to the current allegations may very well lie with the Town.

Consequently, Mr. Seguin is contemplating legal action against the Town. His objectives in doing so are clear. Firstly, he wishes to provide himself with the means of rendering baseless the claims raised by the Plaintiffs in the current action. Next, and in a related fashion, he is desirous of exposing the mistreatment leveled against him during his time on Council. As I am sure you might appreciate, the entire affair, stretching over the last number of years, has been both emotionally and financially draining to both Mr. Seguin and Ms. Sholtz. His approach would therefore take the form of a direct action against the Town, as opposed to an application for Judicial Review.

However, proceeding in this manner is not without a degree of reluctance, mainly owing to the costs involved, not only to himself but to the taxpayer-residents of the Town. Therefore, prior to involving the Town in costly litigation, we are asking that the Town consider re-entering into settlement discussions with Mr. Seguin whereby cooperation might be achieved in a view to resolving all matters.

We are available to discuss this matter at your earliest convenience and look forward to your response.

Yours truly,
SCHEIFELE, ERSKINE & RENKEN

Per: 

GAVIN H. LEITCH



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January 16, 2019

Moved by: Peter Bordignon

Seconded by: Rob Potter

THAT Council receive the correspondence from Scheifele Erskine and Renken dated January 7, 2019 regarding former Councillor Michael Seguin;

AND THAT Council direct staff to:

- a) Investigate and respond to Michael Seguin's coverage under the Town's insurance policy;
- b) Respond to the correspondence regarding the request for specific records;
- c) Engage legal advice from a solicitor that has not been involved with the complaint or file, or ever provided any legal advice or services to the Town in the past, who also has integrity commissioner experience; and
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Councillor Andrea Matrosovs requested a recorded vote:

Deputy Mayor Bartnicki	Yay
Councillor Bordignon	Yay
Councillor Matrosovs	Yay
Councillor Potter	Yay
Councillor Sampson	Yay
Councillor Uram	Yay
Mayor Soever	Yay

The motion is Carried.

CERTIFIED TO BE A TRUE COPY


Krista Royal, Deputy Clerk