

COMMITTEE OF THE WHOLE MARCH 23, 2010

INDEMNIFICATION BY-LAW

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor, in consultation with the City Manager and the Senior Management Team, recommends that Council enact an Indemnification By-law as described herein.

Contribution to Sustainability

Not applicable.

Economic Impact

The economic impact of this Report is presently undetermined, as the number of instances and costs per instance that might occur pursuant to the By-law, during the course of a given year, cannot be estimated. However, any costs that are incurred during the course of legal proceedings can be recovered in certain instances where the proceeding is ultimately dismissed or otherwise concluded in a manner favourable to the City. As well, the By-law provides for indemnification only in those instances where insurance coverage is not available. The legal costs that are incurred will be paid from the Human Resources Professional Fees Budget, except where the proceeding does not relate to a labor or employment law matter, in which case costs will be paid from the Legal Services Professional Fees Budget.

Communications Plan

The enactment of the By-law will be communicated to City employees.

Purpose

The purpose of this report is to recommend enactment of an Indemnification By-law, to provide consistency and predictability in the ability to obtain financial assistance where legal proceedings are commenced against current or former members of Council and employees, in relation to actions taken in the course of official or employment duties.

Background

Section 279 of the *Municipal Act, 2001*, permits the City to act as an insurer for the protection of members of council and employees, or former members of Council and employees, to protect against risks that may involve pecuniary loss or liability, the payment of any damages or costs awarded or expenses incurred by them, as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty, as well as settlements paid and costs incurred to defend such proceedings.

Analysis and Options

The City's insurance policies provide coverage for a wide variety of potential claims, such as where a third party seeks compensatory damages because of an alleged wrongful act causing financial loss including negligence or misrepresentation. Coverage is also provided for payment of legal fees including disbursements incurred in the defence of civil legal proceedings. However, despite the extent of coverage, there are inevitably "gaps" in coverage, such as where losses are within the deductible amount. As well, the City's insurance policies provide no coverage for certain claims including payment of fines and penalties, and legal defence costs

arising from charges laid for an alleged offence arising under federal legislation, even where the allegations are ultimately dismissed by a Court.

Presently there is no prescribed procedure in effect at the City respecting reimbursement by members of Council or employees, of legal expenses, costs, damages or other losses incurred for actions taken in the course of official or employment duties, which are not otherwise covered by the City's insurance policies. Where such costs or losses have been incurred or were anticipated, staff has sought Council direction to indemnify, on a case by case basis. Adoption of an Indemnification By-law would ensure consistency in the determination of when indemnification is appropriate, and would provide guidelines concerning timing and parameters for indemnification.

Indemnification By-laws similar to the City's draft have been in place for several years in surrounding municipalities including Toronto, York Region, Richmond Hill, Mississauga and Brampton.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council: supporting employees who may be named in lawsuits for actions taken in good faith in the course of regular duties is illustrative of the City's desire to value and encourage a highly motivated workforce, as well as its interest in attracting, retaining and promoting skilled staff.

Regional Implications

There are no regional implications associated with this Report.

Conclusion

Indemnification under an Indemnification By-law would take place only in respect of matters not covered by the City's insurance policies, for costs or losses arising from acts done or omissions made in good faith in the performance of official or employment duties. The proposed By-law would apply to present and former employees and members of Council.

Attachments

There are no attachments to this report.

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Respectfully submitted,

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City Solicitor