

Committee of the Whole (2) Report

DATE: Tuesday, April 21, 2020

WARD(S): ALL

**TITLE: REIMBURSEMENT OF LEGAL EXPENSES FOR MEMBERS OF
COUNCIL ON COMPLAINTS TO THE INTEGRITY
COMMISSIONER (REFERRED)**

FROM:

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar

ACTION: DECISION

Purpose

Referred report from the Council meeting of March 11, 2020, Report No. 11, Item No. 10, which was referred to the Committee of the Whole meeting of April 7, 2020. This report is now referred to the April 21, 2020, Committee of the Whole meeting, as the April 7, 2020 Committee of the Whole meeting was cancelled due to the COVID-19 pandemic crisis.

This report offers comments for Council's consideration in respect of reimbursement of legal expenses where a Member of Council is named in a Code of Conduct complaint.

Report Highlights

- Members of Council are exposed to a variety of potential or actual liabilities or costs in the good faith performance of their duties of elected office.
- Currently, neither the Indemnification By-law nor the Code Complaint Protocol address indemnification for legal expenses incurred by a Member of Council related to Code complaints that are not related to the *Municipal Conflict of Interest Act*.
- Any policy decision to reimburse legal expenses incurred to respond to Code of Conduct complaints brought against Members of Council should:
 - Satisfy the public interest objectives;
 - Encourage the highest standards of professional and ethical behaviour among elected officials;
 - Protect elected officials who act in good faith in the performance of their official duties.

Recommendation

Council, at its meeting of March 11, 2020, (Committee of the Whole, Report No. 11, Item 10) adopted the following recommendation:

Recommendation of the Committee of the Whole meeting of March 9, 2020:

- 1) That consideration of this matter be deferred to the April 7, 2020 Committee of the Whole (1) meeting.

Report and Recommendation of the Integrity Commissioner and Lobbyist Registrar dated March 9, 2020:

Recommendation

1. That amendments to the current Indemnification By-law be considered, if Council decides to indemnify Members of Council and Local Boards for legal expenses where a Member is named in a Code of Conduct complaint to the Integrity Commissioner.

Report dated March 9, 2020

Background

In 2017 the Province passed legislation to amend the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* (the “MCIA”), giving Integrity Commissioners the

authority to review and consider complaints made under the *MCIA* beginning March 1, 2019.

In response to these amendments, in 2019 the Integrity Commissioner and City staff brought forward a revised Code, as well as a revised Code Complaint Protocol. The revised Code as well as a revised Complaint Protocol were approved by Council on June 12, 2019. Section 19 of the pre-June 2019 Code Complaint Protocol was not included in the revised Code Complaint Protocol.

The Integrity Commissioner and Lobbyist Registrar believes that currently, if a formal Code complaint against a Member of Council is filed with the Integrity Commissioner under the Code with respect to a violation under the *MCIA*, the legal expenses related to responding to the complaint are covered under the Indemnification By-law.

Currently, neither the Indemnification By-law nor the Code Complaint Protocol address indemnification for legal expenses incurred by a Member of Council with respect to Code complaints that are not related to the *MCIA*.

At the February 11, 2020 Council meeting, City Council received a staff report from the Office of the Integrity Commissioner and Lobbyist Registrar that contained an overview of policy options available, if Council decided to indemnify themselves for legal expenses related to responding to Code complaints.

Previous Reports/Authority

[February 11, 2020 Council Report - Reimbursement of Legal Expenses for Members of Council.](#)

[March 22, 2011 Committee of the Whole - Report on Reimbursement of Legal Expenses for Members of Council on Complaints to the Integrity Commissioner.](#)

Analysis and Options

The role of the Integrity Commissioner is created by statute. As a statutory officer responsible for the application of the rules of the Code and the *Municipal Conflict of Interest Act* (the “*MCIA*”), the Integrity Commissioner has a role in applying the Code Protocol in response to Code complaints. As the Integrity Commissioner is familiar with the indemnification rules in other jurisdictions, her role as Integrity Commissioner includes assisting in sharing her knowledge in the furtherance of accountability at the City.

Policy Decision Considerations

Any policy decision to reimburse legal expenses incurred to respond to Code of Conduct complaints brought against Members of Council should satisfy the following public interest objectives:

- Encouraging the highest standards of professional and ethical behaviour among elected officials;
- Protecting elected officials who act in good faith in the performance of their official duties.

The *MCIA* provides the legal framework within which to identify, declare, address and adjudicate conflicts of interest of Members of Council and Local Boards. The Integrity Commissioner may receive and investigate *MCIA* complaints. If, upon completion of an investigation, the Integrity Commissioner determines that on a balance of probabilities there has likely been a violation of the *MCIA*, or is otherwise of the opinion that it is in the City's interest for a judge to determine if there has been a violation of section 5, 5.1 or 5.2 of the *MCIA*, the Integrity Commissioner may apply to a judge for such a determination.

After deciding whether or not to apply to a judge, the Integrity Commissioner shall publish written reasons for such decision. The decision by the Integrity Commissioner to not apply to a judge, concludes a Code inquiry under section 223.4.1 of the *Municipal Act* that there has not been a Code contravention. Only a court can make a finding that a member has or has not contravened the *MCIA*.

If Council decides to indemnify Members of Council and Local Boards¹ for legal expenses where a Member is named in a Code of Conduct complaint, amendments to the Indemnification By-law may consider the following policy considerations:

- That a Member's request for and approval of advance funding be made to the City Solicitor.
- That a Member not be required to repay the City of funds advanced, if the Integrity Commissioner finds that:
 - there has been no Code contravention; or
 - a Code contravention has occurred by reason of inadvertence, or
 - a Code contravention has occurred by reason of a bona fide error in judgment; or
 - the referral of the matter is frivolous, vexatious or not made in good faith and the Integrity Commissioner dismisses the complaint without an investigation, or that there are no grounds or insufficient grounds for an investigation; or

¹ Members on the Accessibility Advisory Committee, Committee of Adjustment, Heritage Vaughan Committee, and Property Standards Committee

- where it becomes apparent in the course of an investigation that there are insufficient grounds to continue the investigation, the Integrity Commissioner terminates the investigation and dismisses the complaint.

Financial Impact

Not applicable.

Broader Regional Impacts/Considerations

Not applicable.

Conclusion

The role of the Integrity Commissioner includes applying sections 5, 5.1 and 5.2 of the *MCIA* to Members of Council and Local Boards in respect of their pecuniary interests. As a result, the Integrity Commissioner can weigh in on the matter before Council insofar as the language in the Indemnification By-law could interact with a Member's potential pecuniary interest.

However, it would be beyond the Integrity Commissioner's authority to determine what policy options are within the City's authority to include in the City's Indemnification By-law and, therefore, the Integrity Commissioner makes no recommendations in that regard. What is within the City's authority to include in the Indemnification By-law is a question appropriately directed to the City Solicitor.

For more information, please contact: Office of the Integrity Commissioner and Lobbyist Registrar.

Attachments

None

Prepared by

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